

UNDERSTANDING THE ARMS TRADE TREATY

FROM A HUMANITARIAN PERSPECTIVE



ICRC



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INTRODUCTION

The Arms Trade Treaty (ATT), which entered into force in December 2014, is part of the international response to the tremendous human suffering caused by the widespread and poorly regulated availability of conventional weapons. In establishing for the first time a global norm for responsible arms transfers, the ATT represents a historic achievement.

In its work to protect and assist victims of armed conflict and other situations of violence, the International Committee of the Red Cross (ICRC) has borne witness to the high human and social costs of the widespread availability and misuse of conventional arms. Weak controls on international arms transfers have facilitated violations of international humanitarian law (IHL)¹ and human rights law. They have endangered vital medical and humanitarian assistance. They have prolonged armed conflicts, with tragic consequences for civilians and their communities. And they have contributed to persistently high levels of armed violence and insecurity even after armed conflicts have ended, hindering post-conflict reconciliation and reconstruction.²

Today, as weapons continue to flow to some of the most brutal armed conflicts, responsible arms transfers are a humanitarian imperative, and restraints on such transfers an essential element of any humanitarian response. Under the four Geneva Conventions of 1949, all States have an obligation to respect and ensure respect for IHL. They must therefore ensure that the arms and ammunition they transfer do not end up in the hands of those who may be expected to use them to commit war crimes. The ATT acknowledges this responsibility of States by prohibiting

1 International humanitarian law (IHL) – also known as the law of war or the law of armed conflict – is made up of rules that aim to limit the effects of armed conflict for humanitarian reasons. It protects persons who are not or are no longer participating in hostilities, and imposes limits on the choice of means and methods of warfare.

2 See ICRC, *Arms Availability and the Situation of Civilians in Armed Conflict*, ICRC, Geneva, 1999, pp. 1–15.

arms transfers where there are risks of this happening. The Treaty similarly prohibits arms transfers if the arms could be used to commit serious violations of international human rights law.

By establishing common international standards for regulating the international trade in conventional arms, the ATT holds out the promise of saved lives, unhindered delivery of medical and humanitarian assistance, and strengthened compliance with IHL and human rights. But fulfilling this promise will require the concerted efforts of all stakeholders – including States, the International Red Cross and Red Crescent Movement and civil society – to promote universal adherence to the Treaty and its faithful implementation.

This publication provides an overview of the background of the ATT, its object and purpose and its main requirements. It is not intended to be a record of the treaty's negotiating history or a comprehensive commentary on the treaty. Rather, it presents and explains the ATT's major elements, and offers the ICRC's recommendations regarding the implementation of those provisions of the Treaty that are most relevant to achieving its humanitarian purpose.

The ICRC's views on certain provisions of the ATT are presented in the text boxes.

The annexes contain the text of the ATT and a list of additional resources on the ATT.

**REDUCING HUMAN SUFFERING
THROUGH RESPONSIBLE
ARMS TRANSFERS**

**THE ROAD
TO THE ARMS
TRADE TREATY**

2.1 Responsible arms transfers as a humanitarian imperative

States party to the Geneva Conventions first expressed alarm at the uncontrolled proliferation of weapons in 1995, during the 26th International Conference of the Red Cross and Red Crescent.³ The Conference mandated the ICRC “to examine, on the basis of first-hand information available to it, the extent to which the availability of weapons is contributing to the proliferation and aggravation of violations of IHL in armed conflicts and the deterioration of the situation of civilians.”⁴ The ICRC published the results of its study four years later, finding that the widespread and uncontrolled availability of arms and ammunition facilitates IHL violations, hampers the delivery of humanitarian assistance, and contributes to prolonging the duration of armed conflicts and to maintaining high levels of insecurity and violence even after armed conflicts have ended.⁵

Based on the ICRC’s recommendations, the 27th International Conference in 1999 called on States to enhance the protection of civilians in armed conflict and post-conflict situations by strengthening controls on the availability of arms and ammunition at national, regional and international levels. Crucially, the Conference called on States “to integrate consideration of respect for international humanitarian law into national decision-making on transfers of arms and ammunition.”⁶ This appeal was echoed by the three subsequent International Conferences in 2003, 2007 and 2011 respectively, which committed States to strengthen controls on the transfer of weapons, including at the global

3 The International Conference of the Red Cross and Red Crescent brings together every four years the States party to the Geneva Conventions and the components of the International Red Cross and Red Crescent Movement, i.e. the ICRC, the International Federation of Red Cross and Red Crescent Societies, and the 190 national Red Cross and Red Crescent Societies.

4 Recommendation VIII(c) of the Intergovernmental Group of Experts for the Protection of War Victims, attached to Resolution 1 of the 26th International Conference of the Red Cross and Red Crescent, “International Humanitarian Law: From Law to Action: Report on the Follow-up to the International Conference for the Protection of War Victims”, endorsing the recommendations of the Intergovernmental Group of Experts, Geneva, 3–7 December 1995.

5 ICRC, *op. cit.*

6 Resolution 1 of the 27th International Conference of the Red Cross and Red Crescent, “Adoption of the Declaration and the Plan of Action” and “Plan of Action for the Years 2000–2003”, Geneva, 31 October–6 November 1999, Final goal 1.5, para. 23.

level, so that weapons do not end up in the hands of those who may be expected to use them in violation of IHL.⁷

The efforts of the ICRC and the broader International Red Cross and Red Crescent Movement to promote responsible arms transfers proceeded in parallel to those of a group of Nobel Peace Prize laureates and civil society organizations. In the 1990s, the group had voiced concerns about the unregulated global arms trade and its impact on human security. In 2001, the group called for a universal, legally binding agreement governing arms transfers on the basis of States' commitments under IHL and international human rights law. In pursuit of this goal, an international coalition of non-governmental organizations (NGOs) in 2003 launched the Control Arms campaign, advocating the adoption of an "arms trade treaty" with the strongest possible common international standards for conventional arms transfers based on human rights, development and IHL concerns.⁸

Soon after, the ICRC began expressing its support for the goal of an arms trade treaty as an important means to reduce human suffering. Many National Red Cross and Red Crescent Societies, which had also been active in raising their governments' and public awareness of the severe human cost of the widespread availability of arms and ammunition, joined this call.

7 Resolution 1 of the 28th International Conference of the Red Cross and Red Crescent, "Adoption of the Declaration and Agenda for Humanitarian Action", Geneva, 2–6 December 2003, Final Goal 2.3; Resolution 3 of the 30th International Conference of the Red Cross and Red Crescent, "Reaffirmation and Implementation of International Humanitarian Law: Preserving Human Life and Dignity in Armed Conflict", Geneva, 26–30 November 2007, para. 20; and Resolution 2 of the 31st International Conference of the Red Cross and Red Crescent, "4-Year Action Plan for the Implementation of International Humanitarian Law", Geneva, 28 November–1 December 2011, Annex 1, Objective 5.

8 Control Arms, *Making it Happen: The Role of Civil Society in Supporting and Promoting ATT Implementation and Universalization*, 17 February 2015, <http://controlarms.org/en/wp-content/uploads/sites/2/2015/05/Civil-Society-Role-CSP.pdf>.

2.2 The Arms Trade Treaty process

In 2006, the UN General Assembly recognized that the absence of common international standards for the transfer of conventional arms contributes to armed conflict, the displacement of people, crime and terrorism, and that these in turn undermine peace, reconciliation, safety, security, stability and sustainable social and economic development. Based on this finding, the General Assembly launched a process to examine the feasibility of a treaty establishing common international standards for the transfer of conventional arms.⁹

The process culminated in two diplomatic conferences, held in July 2012 and March 2013, to negotiate a legally binding treaty on “the highest possible common international standards for the ... transfer of conventional arms”.¹⁰ Although the Final United Nations Conference on the Arms Trade Treaty ended without reaching consensus on the draft text of the treaty, the UN General Assembly adopted it by a vote a few days later, on 2 April 2013.¹¹ The ATT was opened for signature on 3 June of that year, and entered into force just 18 months later, on 24 December 2014.

The ICRC actively participated in the discussions and negotiations that led to the adoption of the ATT, with the aims of ensuring that:

- the Treaty’s text would clearly reflect its humanitarian purpose;
- the scope of the Treaty would include all forms of conventional weapons, as well as their ammunition, and all forms of arms transfers; and
- in light of States’ existing obligation to ensure respect for IHL, the treaty’s criteria for the transfer of arms and ammunition would require that States (a) assess the likelihood that serious violations of IHL would be committed with the weapons being transferred, and (b) not authorize transfers if there was a clear risk that the

⁹ UN Doc. A/RES/61/89, 6 December 2006.

¹⁰ UN Doc. A/RES/64/48, 2 December 2009, and UN Doc. A/RES/67/234A, 4 January 2013.

¹¹ The UN General Assembly adopted the ATT on 2 April 2013 by 154 votes to 3, with 23 abstentions. See UN Doc. A/RES/67/234B, 11 June 2013.

arms and ammunition would be used to commit serious violations of IHL.

The final text of the ATT largely reflected these aims.¹²

2.3 Responsible arms transfers outside of the ATT

Before the adoption of the ATT, arms transfers were regulated by a patchwork of **regional instruments**. These include legally binding instruments, such as the 2008 European Union (EU) Council Common Position on arms export controls,¹³ and the 2006 Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials.¹⁴ Other regional instruments provide States with non-binding guidelines for controlling their arms transfers. Among these are the 2005 Central American Integration System (SICA) Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel, the 2005 Best Practice Guidelines for the implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons, and the 2000 Organization for Security and Co-operation in Europe (OSCE) Document on Small Arms and Light Weapons.¹⁵

Like the ATT, these instruments subject arms transfers to considerations of respect for IHL and/or human rights by the

¹² See Annex I: The Arms Trade Treaty.

¹³ Council Common Position 2008/944/CFSP of 8 December 2008, defining common rules governing the control of exports of military technology and equipment.

¹⁴ A third regional treaty regulating arms transfers, the 2010 Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition, Parts and Components that can be used for their Manufacture, Repair and Assembly (Kinshasa Convention), has not yet entered into force (<http://disarmament.un.org/treaties/t/kinshasa/text>).

¹⁵ Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel, UN Doc. A/CONF.192/2006/RC/WP.6; Regional Centre on Small Arms in the Great Lakes Region, the Horn of Africa and Bordering States (RECISA), Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons, 2005; OSCE Document on Small Arms and Light Weapons, 24 November 2000. See also Wassenaar Arrangement, Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW), amended in 2007; and Organization of American States (OAS), Amendments to the Model Regulations for the Control of the International Movement of Firearms, their Parts and Components and Ammunition – Broker Regulations, 13 November 2003, and Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition, 17 November 2003.

recipient, among other criteria. However, each applies only to limited numbers of States, and they differ in the scope of the weapons they cover and the level of risk that would prevent arms transfers. In contrast, the ATT has established for the first time a global standard to regulate the transfer of a broad range of conventional arms and ammunition.

It is important to note that, even if a State is party neither to the ATT nor to a regional arms transfer instrument, its arms transfers do not occur in a legal vacuum. At a minimum, they are framed by the State's **obligation to respect and ensure respect for IHL** "in all circumstances".¹⁶ This obligation is interpreted as conferring on States not involved in an armed conflict a duty to ensure respect for IHL by the parties to a conflict, consisting of a negative obligation to refrain from any act that would encourage, aid or assist in the commission of an IHL violation, and of a positive obligation to use one's practical means to influence the behaviour of a party to an armed conflict in order to prevent IHL violations from being committed.

In the view of the ICRC, applying the obligation to ensure respect for IHL to arms transfers would entail the following requirements:

- ➔ In order to prevent the possibility that arms transfers might amount to encouraging, aiding or assisting a party to an armed conflict in the commission of IHL violations, a State would have to assess whether the recipient is likely to use the weapons to commit IHL violations. If there is a substantial or clear risk of this happening, the State must refrain from transferring the weapons.

¹⁶ This obligation is found in Article 1 common to the Geneva Conventions of 1949 and in Article 1 (1) of their Additional Protocol I of 1977, and is a rule of customary international law applying in both international and non-international armed conflicts. See J.M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, ICRC and Cambridge University Press, 2005, Rule 144. For a discussion of the application of this obligation to arms transfers specifically, see "International humanitarian law and the challenges of contemporary armed conflicts", Report to the 32nd International Conference of the Red Cross and Red Crescent, Geneva, held on 8–10 December 2015, October 2015. For a more in-depth explanation of the obligation to ensure respect for IHL by others that are party to an armed conflict, see the Commentary on the First Geneva Convention, 2nd edition, ICRC and Cambridge University Press, 2016, Art. 1, MN 153–191, <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>.

→ In addition, a State is required to take positive steps to ensure respect for IHL by parties to an armed conflict. Here, a State's obligation is one of due diligence. It must use its leverage, based on the means at its disposal, to induce respect for IHL, in particular where there is a foreseeable risk that IHL violations may be committed. Indeed, when a State supplies weapons to a party to an armed conflict, it can be considered particularly influential in ensuring respect for IHL, owing to its ability to provide or withhold the means by which violations may be committed. Its practical ability to influence the recipient may be exercised through a range of means,¹⁷ including mitigation measures, or by deciding not to transfer the weapons.

The ATT makes explicit reference to the obligation to ensure respect for IHL in its principles, which States Parties are required to take into account in implementing the Treaty.

2.4 Faithfully implementing the ATT

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, principles, and object and purpose. Taken together, they form the basis on which to interpret the Treaty's requirements.¹⁸

Understanding the aims and objectives of the ATT is also important for States that have signed but not yet ratified the Treaty. Although they are not legally bound to implement the ATT until they have ratified it, signatory States are

¹⁷ See the Commentary on the First Geneva Convention, 2nd edition, ICRC and Cambridge University Press, 2016, Art. 1, MN 164–173, <https://ihl-databases.icrc.org/ihl/full/GCI-commentary>.

¹⁸ Under Article 31 of the Vienna Convention on the Law of Treaties, which reflects a rule of customary international law, the terms of a treaty must be interpreted in good faith, in accordance with their ordinary meaning and in their context, and in light of the treaty's object and purpose. The "context" of a treaty includes its preamble.

required to refrain from acts that would defeat the Treaty's "object and purpose".¹⁹

Article 1 of the ATT sets out its object and purpose. Its **object** is to "establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms" and to "prevent and eradicate the illicit trade in conventional arms and prevent their diversion".

"Reducing human suffering" is one of the ATT's fundamental **purposes**. The others are to contribute to international and regional peace, security and stability, and to promote "cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties". The purposes of the ATT are interlinked and mutually reinforcing: by reducing human suffering, the ATT will contribute to peace, stability and security, aims that will require cooperation, transparency and responsible action by all States Parties.²⁰

The ATT's preamble commits States Parties to "act in accordance with" a list of **principles**, which express pre-existing obligations and rights of States under international law, including States' duties under the UN Charter, such as the settlement of disputes by peaceful means and the obligation to refrain from the threat or use of force against any State.

Importantly, the principles also reaffirm States' **obligation to respect and ensure respect for IHL**, discussed above, "in accordance with, inter alia, the Geneva Conventions of 1949",²¹ and also refer to "respecting and ensuring respect

19 This is also the case for a State that is awaiting the Treaty's entry into force for it, during the 90-day period following the deposit of its instrument of ratification or accession. In addition, States are prohibited from formulating reservations that are incompatible with the Treaty's object and purpose. See Articles 18 and 25 of the ATT and Article 19 of the Vienna Convention on the Law of Treaties.

20 See also the Treaty's sixth preambular paragraph, which recognizes that "peace and security, development and human rights are interlinked and mutually reinforcing".

21 The scope of this obligation is discussed in Section 2.3 above.

for human rights in accordance with, inter alia, the Charter of the United Nations and the Universal Declaration of Human Rights”.²²

The importance of the principles is underscored by Article 5 (1) of the Treaty, which requires States Parties to implement the ATT “in a consistent, objective and non-discriminatory manner, bearing in mind the principles” referred to in the Treaty, including the responsibilities of all States to prevent and put an end to violations of IHL and human rights. These are especially relevant to the implementation of the Treaty’s arms transfer criteria, set out in Articles 6 and 7.²³

To ensure that the ATT effectively reduces the human suffering caused by the widespread and poorly regulated availability of weapons and their misuse:

- States Parties must interpret and implement the ATT in good faith, in accordance with its humanitarian purpose, and in a consistent, objective and non-discriminatory manner, bearing in mind their responsibilities to respect and ensure respect for IHL and for international human rights law.
- States that have signed the ATT must immediately review their arms transfer policies so as to avoid any transfers that would undermine the Treaty’s object and purpose.
- States that have ratified the ATT must do the same pending its entry into force for them.
- Upon ratifying or acceding to the ATT, States must not make any reservations that would contradict or undermine the Treaty’s object and purpose.

²² The obligations to respect human rights are formulated variously in the relevant treaties. Human rights obligations apply not only domestically (within national territory), but also, in certain circumstances, extraterritorially. See, for instance, under Art. 2 (1) of the 1966 International Covenant on Civil and Political Rights, one of the most widely ratified universal human rights treaties, “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

²³ See Section 3.2 below.

THE ARMS TRADE TREATY
OVERVIEW
OF KEY
PROVISIONS

The ATT requires each State Party **to regulate the international trade in conventional arms taking place under its jurisdiction**, including export, import, transit and brokering, and to take measures to prevent their diversion to the illicit market. The required controls on arms transfers are set out in Articles 6 to 11 of the Treaty. The treaty applies to all types of transfer of conventional weapons defined under Article 2 (1). Certain provisions of the treaty also apply to ammunition/munitions and parts and components defined under Articles 3 and 4, respectively.

In order to give effect to these obligations, the ATT requires each State Party **to establish a national control system** and to adopt appropriate laws and regulations, among other national implementation measures. These are described in Articles 5, 12 and 14 of the Treaty.

In view of the ATT's purpose of promoting cooperation, transparency, responsible arms trade and confidence-building among States Parties, the Treaty requires each State Party **to report** on measures taken to implement the Treaty and on its exports and imports of conventional arms, and **to cooperate with and assist other** States Parties in effectively implementing the Treaty. These actions are described in Articles 13, 15 and 16 of the Treaty.

As explained in Section 2.4, in interpreting and implementing these obligations, States Parties must take into account the Treaty's object and purpose, and its principles, which include respecting and ensuring respect for IHL and international human rights law.

The ATT establishes common international standards for regulating the international trade in conventional arms and ammunition, which all States Parties are legally bound to apply.

It is important to note that the ATT establishes these as *minimum* common requirements, while encouraging States to take additional measures. This is emphasized in its preamble, which specifies that “nothing in this Treaty prevents States from maintaining and adopting additional effective measures to further the object and purpose of this Treaty”. Moreover, in several provisions of the ATT, States Parties “are encouraged” to take certain measures without these being mandatory.

→ The ICRC recommends that, in addition to implementing the ATT’s mandatory provisions, States Parties take the additional measures encouraged by the Treaty, as well as any other measures conducive to fulfilling the Treaty’s humanitarian purpose.

3.1 The scope of the ATT

3.1.1 Weapons and items covered by the Treaty - Articles 2 (1), 3, 4, 5 (2) and 5 (3)

Article 5 (2) requires each State party to the ATT to establish a **national control list** of the conventional arms and items covered by its **national control system**.²⁴ The national control list must cover, at a minimum, all **conventional arms** as set out in Articles 2 (1) and 5 (3), and the **ammunition/munitions** and **parts and components** as defined in Articles 3 and 4. These provisions establish a common minimum definition of conventional arms, ammunition/munitions and parts and components.

The conventional arms listed in Article 2 (1) are subject to all of the ATT’s requirements, whereas the items covered under Articles 3 and 4 are subject to a more limited set of requirements, including the prohibitions on transfers in Article 6 and the restrictions on exports in Article 7.

²⁴ The national control system is described in more detail in Section 3.5 below.

(a) Conventional arms

Article 2 (1) lists eight categories of conventional arms to which the Treaty applies: battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers, and small arms and light weapons. Pursuant to Article 5 (3), national definitions of the first seven of these categories – i.e. those listed in Article 2 (1)(a) through (g) – must cover the descriptions used in the UN Register of Conventional Arms at the time of entry into force of the Treaty, i.e. as at 24 December 2014.²⁵ At the same time, Article 5 (3) encourages States Parties to opt for definitions that are more comprehensive than those of the Register.

Regarding small arms and light weapons – the eighth category of conventional arms referred to in Article 2 (1) (h) – Article 5 (3) requires that national definitions cover “the descriptions used in relevant United Nations instruments” at the time of entry into force of the Treaty. The only UN instrument describing “small arms and light weapons” at the time of entry into force of the Treaty was the UN International Tracing Instrument. It defines these weapons as “any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive”, and provides a non-exhaustive list of weapons that meet this definition.²⁶

²⁵ “The Global Reported Arms Trade: The UN Register of Conventional Arms”, <http://www.un-register.org/Background/Index.aspx>. In its report A/68/140 of 15 July 2013, the 2012–2013 Group of Governmental Experts on the continuing operation of the United Nations Register of Conventional Arms and its further development noted that armed unmanned aerial vehicles are covered by the Register’s categories of combat aircraft and attack helicopters, and recommended that UN Member States report international transfers of such vehicles to the Register.

²⁶ This definition appears to exclude hand grenades and manually emplaced landmines, especially when read together with Article 3, which limits the scope of ammunition/munitions covered by the Treaty to those “fired, launched or delivered by the conventional arms covered under Article 2 (1)”. In contrast, the 1997 Report of the UN Panel of Governmental Experts on Small Arms applies a broad definition of small arms and light weapons based on “an assessment of weapons actually used in conflicts”, in which it includes hand grenades and anti-personnel and anti-tank landmines in the category of “ammunition and explosives”: see UN Doc. A/52/298 of 27 August 1997, para. 26 (c) (iv) and (v). For its part, the EU common military list covers grenades, landmines and “other explosive devices”.

Although in strictly legal terms the ATT does not cover all conventional weapons that exist today or that might exist tomorrow, the impact of potential omissions will depend on national implementation. In practice, most States apply their arms export laws and controls to all conventional weapons and, most often, to ammunition as well. For practical reasons, it seems unlikely that they would seek to exclude those few types of weapons not covered by the ATT from the standards they apply to all other weapons.

As conventional weapons of any kind can be used to commit serious violations of IHL and of international human rights law, the ICRC recommends that each State Party:

→ Apply the ATT to the broadest range of conventional arms, including all types of small arms and light weapons, consistent with the recommendation in Article 5 (3) of the Treaty and its purpose of reducing human suffering.

(b) Ammunition/munitions and parts and components

As the UN Secretary-General has noted, the value of small arms and light weapons “depends on an uninterrupted supply of ammunition”.²⁷ The inclusion of ammunition/munitions²⁸ in the ATT aims to ensure that their transfer does not fuel the misuse of weapons that are already in circulation. Also important are the ATT’s controls on the transfers of parts and components, which aim to ensure that States do not circumvent rules on conventional arms transfers by simply transferring their individual parts and components for assembly in a recipient State. In practice, most States that are known to regulate arms transfers apply the same controls to the transfer of ammunition and of parts and components.

²⁷ *Small Arms: Report of the Secretary-General*, UN Doc. S/2011/255, 5 April 2011, para. 9.

²⁸ The words “ammunition” and “munitions” are separated by a forward slash in the English version of the ATT, indicating broad coverage. They are translated by a single word in other UN official languages, such as French (“munitions”) and Spanish (“municiones”). The term “ammunition” will be used hereafter.

Transfers of ammunition/munitions and of parts and components are governed by the ATT in a somewhat different manner than the weapons themselves.

Articles 3 and 4 of the ATT require each State Party to regulate the export of ammunition that would be “fired, launched or delivered by the conventional arms covered under Article 2 (1),”²⁹ and of parts and components that are “in a form that provides the capability to assemble” the said conventional arms. In particular, prior to authorizing the export of ammunition or parts and components, a State Party must subject the proposed export to the transfer criteria of Article 6 and the export assessment of Article 7 (described in Section 3.2 below). However, in contrast to the requirements applying to the conventional arms covered by Article 2 (1), the ATT does not oblige States (a) to regulate the import, transit or trans-shipment, or brokering of ammunition or parts and components,³⁰ (b) to take measures to prevent their diversion,³¹ or (c) to record and report on export authorizations or actual exports or imports of these items.³²

²⁹ This would include remotely delivered mines, grenades fired from a grenade launcher, and tear-gas canisters and rubber bullets, to the extent that they are fired from small arms and light weapons. Regarding the scope of weapons and munitions covered by Articles 2 (1) and 3, see the explanation under Section 3.1.1.(a) above.

³⁰ See ATT, Arts. 8–10.

³¹ See ATT, Art. 11.

³² See ATT, Arts. 12 and 13.

There are already massive numbers of conventional arms in circulation, but their impact depends on a constant supply of ammunition, and of parts and components.

- The ICRC therefore recommends that States Parties apply the same transfer controls, regulations and diversion-prevention measures to ammunition and parts and components as they do to the arms themselves. In addition to being more practical, this approach is consistent with the ATT's purpose of reducing human suffering.
- The ICRC also recommends that States Parties record and report on their transfers of ammunition and parts and components, consistent with the Treaty's purpose of promoting transparency, responsible action and confidence-building.

3.1.2 Transfers covered by the Treaty – Article 2 (2) and 2 (3)

For the purposes of the ATT, Article 2 (2) provides that “the activities of the international trade comprise export, import, transit, trans-shipment and brokering”, collectively referred to in the Treaty as “transfer”. This suggests that the Treaty governs all forms of transfer regardless of whether they entail a commercial exchange.³³ Excluding non-commercial arms transfers from the scope of the ATT would create a loophole in which such transfers could proceed even if there were an unacceptable risk of war crimes or other serious crimes being committed by the recipient. This would be incompatible with the obligation to ensure respect for IHL and international human rights law, referred to in the Treaty's principles, and with the requirement that each State Party implement the Treaty in a consistent, objective and non-discriminatory manner.

Pursuant to Article 2 (3), the ATT does “not apply to the international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party's ownership”. This provision is meant to allow a State Party

³³ In their declarations made upon ratification, Liechtenstein (16 December 2014), New Zealand (2 September 2014) and Switzerland (30 January 2015) stated their understanding that, in light of the ATT's object and purpose and the ordinary meaning of Article 2 (2), the scope of this provision is very broad and includes non-monetary transactions, such as gifts, loans and leases.

to send weapons to its armed forces deployed abroad without subjecting such movement to the Treaty's transfer controls. The implication is that, should these weapons change ownership during or at any time after they have been sent abroad, such change of ownership would qualify as a "transfer" and would therefore have to comply with the Treaty's transfer criteria. In addition, although Article 2 (3) refers to the arms remaining under the State Party's "ownership", a State Party could not circumvent the Treaty by loaning or leasing the weapons after it has moved them abroad, for the reasons explained above in relation to the interpretation of Article 2 (2).

→ As weapons transfers of any kind can facilitate serious violations of IHL and international human rights law, the ICRC recommends that States Parties interpret the term "transfer" in the ATT in the broadest possible sense, including also non-commercial transfers, in accordance with the ordinary meaning of the term and the Treaty's humanitarian purpose.

3.2 The Treaty's core obligations

At the heart of the ATT are Articles 6 and 7, which subject the transfer of conventional arms, their ammunition, and parts and components to strict criteria, with the aim of ensuring that the weapons 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. These provisions are crucial to achieving the ATT's humanitarian purpose. They complement existing limits on arms transfers that stem in particular from the obligation to respect and ensure respect for IHL under Article 1 common to the 1949 Geneva Conventions,³⁴ a key principle of the Treaty.

³⁴ *International humanitarian law and the challenges of contemporary armed conflicts*, Report to the 32nd International Conference of the Red Cross and Red Crescent, held in Geneva, Switzerland, on 8–10 December 2015, October 2015, pp. 55–56.

Articles 6 and 7 establish a two-stage process to control transfers of arms, ammunition/munitions and parts and components:

- Under Article 6, a State Party must deny a proposed transfer if the transfer would violate specified international obligations, or if the State Party has knowledge that the transferred weapons would be used to commit genocide, crimes against humanity or war crimes.
- If an *export* is not prohibited under Article 6, the State Party must apply the risk assessment criteria of Article 7 and deny the proposed export where there is an “overriding” risk that exported weapons could be used to commit or facilitate serious violations of IHL or of international human rights law, or other serious crimes.

As indicated, Article 6 applies to all types of transfer referred to in Article 2 (2) of the Treaty, i.e. export, import, transit or trans-shipment, and brokering, while Article 7 applies only to exports.

The importance of Articles 6 and 7 is reflected in Article 23 of the Treaty, which invites signatory and ratifying States to apply these Articles provisionally, pending the Treaty’s entry into force for them.

3.2.1 Transfer prohibitions – Article 6

(a) *Transfer prohibitions relating to international obligations under international agreements*

Article 6 (1) prohibits the transfers of arms, ammunition and parts and components where the transfer would violate the State Party’s obligations under UN Security Council peace enforcement measures adopted under Chapter VII of the UN Charter, “in particular arms embargoes”.

Article 6 (2) also prohibits transfers of such arms and items where the transfer would violate the State Party’s “relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms”. These obligations would include the transfer prohibitions of the Anti-Personnel Mine Ban Convention, the Convention

on Cluster Munitions, or certain Protocols under the Convention on Certain Conventional Weapons, as well as the 2001 Firearms Protocol, among other relevant instruments,³⁵ insofar as the State is a party to these instruments and the weapons they cover fall within the scope of the ATT. In addition, some States have taken the view that Article 6 (2) includes transfer prohibitions arising from human rights and IHL treaties, among other international agreements to which the State is party.³⁶

(b) *Transfer prohibition relating to war crimes and other international crimes*

Article 6 (3) prohibits each State Party from authorizing any transfers of arms, ammunition or parts and components if the State Party has “knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.”

While this provision represents one of the ATT’s most commendable achievements, its wording raises some questions of interpretation, briefly examined below.

- *Knowledge at the time of authorization that the arms or items would be used...*

The term “knowledge” relates to what a State Party knows about the likely behaviour of the recipient, based on the facts at its disposal at the time it authorizes the weapons transfer. This implies assessing the current and past patterns of behaviour of the recipient, such as its respect for IHL in an armed conflict to which it is a party, among other factors.³⁷

³⁵ For a list of relevant multilateral and regional instruments, see UN Office for Disarmament Affairs, Arms Trade Treaty Implementation Toolkit, Module 5, Prohibitions on Transfers, 21 August 2015, <https://www.un.org/disarmament/convarms/att>.

³⁶ See the statement made by Norway on 4 June 2013, after the signing of the ATT.

³⁷ Relevant indicators for this assessment include the recipient’s past and present record of respect for international humanitarian law, and for taking measures to prevent violations or cause them to cease, including by punishing those responsible.

There is a question whether the term “knowledge” in Article 6 (3) of the ATT includes an objective standard of “constructive” knowledge – whereby the State Party “should have known”, based for example on credible publicly available information, that the arms would be used to commit the listed crimes – or whether it refers to a subjective standard of “actual” knowledge in the possession of the State Party.

In their interpretative declarations upon ratification of the Treaty, some States have taken the first view, interpreting the term “knowledge” as meaning “that the State Party concerned shall not authorize the transfer if it has reliable information providing substantial grounds to believe that the arms or items would be used in the commission of the listed crimes”.³⁸ On the other hand, some States apply in their arms transfer policies the standard of “actual knowledge”.³⁹ There are similar divergences of views under the law of State responsibility, regarding a State’s responsibility for aiding or assisting another State in committing an internationally wrongful act where the first State has “knowledge of the circumstances” of the said act.⁴⁰ Still, there may be little practical difference between “actual” and “constructive” knowledge, to the extent that actual knowledge can be inferred from the circumstances.

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

³⁸ Interpretative declarations made by Lichtenstein (16 December 2014) and Switzerland (30 January 2015) upon ratification of the ATT (emphasis added).

³⁹ See “United States Conventional Arms Transfer Policies”, US Presidential Policy Directive/PPD-27, 15 January 2014.

⁴⁰ See International Law Commission (ILC), *Articles on Responsibility of States for Internationally Wrongful Acts*, 2001, United Nations, 2005, Art. 16 (<http://www.refworld.org/docid/3ddb8f804.html>). In their observations and comments to the ILC on Article 16, some States interpret the standard of knowledge as one of actual knowledge or intent, while others apply a standard of constructive knowledge, i.e. that the offending State “knows or should have known” the circumstances of the wrongful act. See ILC, “State responsibility: Comments and observations received from Governments”, fifty-third session, UN Doc. A/CN.4/515 and Add. 1–3, 19 March 2001.

ends.⁴¹ In other words, the level of knowledge required to prohibit a transfer under Article 6 (3) is not one of absolute certainty.

The aim of Article 6 (3) of the ATT is to *prevent* the commission of serious crimes such as genocide, crimes against humanity or war crimes by withholding the supply of weapons that would be used for such purposes. In this regard, the threshold of knowledge under the customary law obligation of States to prevent the crime of genocide is relevant to the interpretation of Article 6 (3). The International Court of Justice has determined that a State may be found to have violated its obligation to prevent the crime of genocide “even though it had no certainty, at the time when it should have acted, but failed to do so, that genocide was about to be committed or was under way; for it to incur responsibility on this basis, it is enough that the State was aware, or should normally have been aware, of the serious danger that acts of genocide would be committed.”⁴² ATT States Parties would need to take this interpretation into account in implementing Article 6 (3), at the very least in relation to genocide. They should also do so in relation to all of the other listed crimes, as a matter of advancing the Treaty’s humanitarian purpose and principles, including ensuring respect for IHL.

41 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” (emphasis added). Criterion Two (a) and (c) requires EU Member States to “deny an export license if there is a clear risk that the military technology or equipment to be exported might be used for internal repression” or “in the commission of serious violations of international humanitarian law”.

42 ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, para. 432 (emphasis added). In articulating this test applicable to the obligation to prevent genocide under Article 1 of the Genocide Convention, the ICJ drew a distinction with *complicity* in genocide, interpreting the latter by reference to Article 16 of the ILC Articles on State Responsibility, which set out a higher standard of evidence akin to “actual knowledge” (*ibid.* para. 420). It further stated that the obligation to prevent genocide is one of conduct, not of result, comparable to the notion of “due diligence” (*ibid.* para. 430).

In sum, in the view of the ICRC, a State Party must deny a transfer under Article 6 (3) if it has substantial grounds to believe, based on information in its possession or that is reasonably available to it, that the weapons would be used to commit genocide, crimes against humanity or war crimes.

Applying the ordinary meaning of the term “knowledge” in the context of Article 6 (3) and in light of the object of the Treaty to establish the highest possible common international standards for regulating the international arms trade for the purpose of reducing human suffering:

→ The ICRC recommends that the term “knowledge” in Article 6 (3) be interpreted objectively to include what a State Party can normally be expected to know, based on information in its possession or reasonably available to it.

- *The scope of genocide and crimes against humanity*

Genocide and crimes against humanity may be committed in peacetime as well as in armed conflicts. Both crimes are prohibited under customary international law.

The crime of genocide is defined in Article 1 of the 1948 Genocide Convention as any one of a list of acts⁴³ committed “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”.

Crimes against humanity are any one of several acts, including murder, enslavement, deportation, imprisonment, torture, rape and other forms of sexual violence, persecution and forced disappearance, among other inhumane acts, committed deliberately as part of a widespread or systematic attack directed against a civilian population. This definition appears with some slight differences in a range of international instruments, including the statutes of the international criminal tribunals.⁴⁴

- *The scope of war crimes*

War crimes are serious violations of IHL entailing individual criminal responsibility and which States have the obligation to prosecute and punish pursuant to treaty or customary law. Violations of IHL are considered serious, and are war crimes, if they endanger protected persons (such as civilians, or wounded or captured combatants) or protected objects (such as civilian buildings or infrastructure), or if they otherwise breach important values. Most war crimes

⁴³ The acts that would constitute genocide under Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide include, among others, killing members of the group, causing them serious bodily or mental harm, and deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

⁴⁴ See, for example, the Rome Statute of the International Criminal Court (ICC Statute) (2002), Article 7; the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) (1993), Article 5; and the Statute of the International Criminal Tribunal for Rwanda (ICTR) (1994), Article 3.

involve death, injury, destruction or unlawful taking of property.⁴⁵

Article 6 (3) of the ATT refers to three categories of war crimes: “grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party”. The latter category indicates that the scope of war crimes covered by Article 6 (3) varies depending on the treaties to which the transferring State is a party.

Grave breaches of the Geneva Conventions of 1949 are certain acts expressly designated as “grave breaches” under each of the four Geneva Conventions, which a State is required to prosecute and punish, irrespective of the nationality of the perpetrator and of where the act occurred.⁴⁶ They are acts committed in international armed conflicts against persons or property protected by the relevant Geneva Convention, such as the wounded and sick, prisoners of war or the civilian population in occupied territory.⁴⁷ Grave breaches of the Geneva Conventions are regarded as war crimes.⁴⁸

Attacks directed against civilian objects or civilians protected as such are serious violations of customary international humanitarian law, whether committed in international or non-international armed conflicts, and are also regarded as war crimes.⁴⁹ The term “as such” is meant to emphasize that

⁴⁵ See Henckaerts and Doswald-Beck, *op. cit.*, Rule 156. A list of war crimes defined by treaties and customary IHL is contained in Annex III of ICRC, *Arms Transfer Decisions: Applying International Humanitarian Law and International Human Rights Law Criteria, Practical Guide*, 2nd edition, 2016.

⁴⁶ Each of the four Geneva Conventions of 1949 (in Articles 49, 50, 129 and 146, respectively) requires each High Contracting Party to criminally repress and provide effective penal sanctions for grave breaches, and to exercise universal jurisdiction over perpetrators.

⁴⁷ The acts constituting grave breaches are listed in Articles 50, 51, 130 and 147, respectively, of each of the four Geneva Conventions of 1949, and include wilful killing, torture or inhuman treatment, and extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.

⁴⁸ This is expressly stated in Article 85 (5) of Additional Protocol I to the Geneva Conventions, and reflected in the definitions of war crimes in the statutes of the international criminal tribunals. For instance, according to Article 8 (2) (a) of the ICC Statute, “war crimes” means grave breaches of the Geneva Conventions of 1949.

⁴⁹ See Henckaerts and Doswald-Beck, *op. cit.*, Rule 156.

civilians are protected against attack as long as they are not directly participating in the hostilities.

Depending on the circumstances, indiscriminate attacks, disproportionate attacks, or attacks using indiscriminate weapons could qualify as “attacks directed against civilian objects or civilians protected as such” under Article 6 (3). This assertion is based on the interpretation of the ICTY, which has stated that such attacks “may give rise” to the inference of direct attacks on civilians, although this would need to be determined on a case-by-case basis.⁵⁰

Other war crimes as defined by international agreements to which it is a Party refers to acts expressly designated as war crimes under relevant treaties, as well as acts defined by IHL treaties as serious violations entailing individual criminal responsibility and which States Parties to these treaties are required to prosecute and punish. Such international agreements include:

- Additional Protocol I to the Geneva Conventions, which applies in international armed conflicts, designates certain acts as “grave breaches” and expressly regards these as war crimes. The Protocol requires States Parties to prosecute and punish grave breaches.⁵¹
- The ICC Statute provides a lengthy list of war crimes over which the Court has jurisdiction.⁵² In addition to the above-mentioned grave breaches of the Geneva Conventions and of Additional Protocol I, the ICC Statute includes in its definition of war crimes acts designated as “serious violations of the laws and customs” applicable in both international and non-international armed conflicts, as well as serious violations of Article 3 common to the four Geneva Conventions, which applies in non-international armed conflicts.
- The 1999 Protocol of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict specifically defines five “serious violations” for which it establishes individual criminal responsibility,

⁵⁰ See ICTY, *Prosecutor v. Stanislav Galić*, Appeals Chamber, IT-98-29-A, 30 November 2006, paras 132–133.

⁵¹ See Articles 11 and 85 of Additional Protocol I of 1977.

⁵² See Article 8 of the ICC Statute.

and which each State Party is required to prosecute and punish.

Several States have stated their understanding that the ATT prohibits all transfers of arms that would be used in the commission of a wide range of war crimes in all types of armed conflict.⁵³ Furthermore, a number of States Parties have declared upon their ratification of the Treaty that the scope of war crimes in Article 6 (3) encompasses acts committed in both international and non-international armed conflicts, including serious violations of common Article 3, as well as war crimes “as described in the Hague Convention IV of 1907 and its Regulations” and in both of the 1977 Additional Protocols, among other international agreements.⁵⁴ In practice, most States that have established criminal sanctions for war crimes apply their criminal legislation to acts that constitute serious violations of common Article 3 and of customary IHL. It would therefore seem practical and logical for a State Party to the ATT to apply the transfer prohibition of Article 6 (3) to a broad range of war crimes in all types of armed conflicts.

It is important to recall that, apart from the transfer prohibition under Article 6 (3) of the ATT, each State has a duty to ensure respect for IHL in its arms transfer decisions.⁵⁵ This is one of the key principles that a State must bear in mind when implementing the Treaty. The obligation includes refraining from transferring weapons to a party to an armed conflict if there is a substantial or clear risk that the recipient would use the weapons to commit violations of IHL. It requires a State to consider the risk of *all* forms of serious violations occurring, not just the three categories of war crimes listed in Article 6 (3). To comprehensively fulfil its obligations under international law, a State party to the ATT

⁵³ See the joint declaration read out by Mexico on behalf of 98 States upon the adoption of the ATT by the UN General Assembly at the 71st plenary meeting of its sixty-seventh session, held on 2 April 2013, UN Doc. A/67/PV.71, p. 20.

⁵⁴ See the interpretative declarations made upon ratification by New Zealand (2 September 2014), Lichtenstein (16 December 2014) and Switzerland (30 January 2015).

⁵⁵ As explained in Section 2.3 above, this obligation stems from Article 1 common to the Geneva Conventions and from customary international humanitarian law.

would therefore need to ensure that the transfer prohibitions applied by its national control system cover a broad range of war crimes, including serious violations of customary IHL applicable in all situations of armed conflict.

If Article 6 (3) is to achieve the ATT's humanitarian purpose and effectively prevent the kinds of war crimes that are typically committed with weapons, it is essential that States Parties apply this provision to a wide range of war crimes in both international and non-international armed conflicts.

→ The ICRC recommends that each State Party adopt a broad scope of war crimes in its legislation to implement the transfer prohibition of Article 6 (3), also bearing in mind the distinct requirement of its duty to ensure respect for international humanitarian law.

3.2.2 Export assessments – Article 7

If a proposed *export* of arms, ammunition or parts and components has not been prohibited under Article 6 of the ATT, a State Party is required to carry out a further assessment under Article 7 of the risk that the arms or items “could be used to commit or facilitate” serious violations of IHL or of international human rights law, or other serious crimes.

In particular, Article 7 (1) requires each State Party to assess “in an objective and non-discriminatory manner” the “potential” that the arms or items:

- “would contribute to or undermine peace and security”;
- “could be used to commit or facilitate” a **serious violation of international humanitarian law**, a **serious violation of international human rights law**, or an act constituting an offence under international instruments relating to terrorism or to transnational organized crime to which the exporting State is a Party.

The wording of Article 7 (1) indicates a lower threshold of risk assessment than that of Article 6 (3), as it is enough that there be the “potential” that the arms or items “could be used” not just to commit but also to “facilitate” the violation.

As explained in section 3.2.1, *serious violations of IHL* are those that endanger protected persons (such as civilians, or wounded or captured combatants) or protected objects (such as civilian homes or infrastructure), or otherwise breach important values.

As for *serious violations of international human rights law*, while no treaty defines this term, States and international human rights bodies tend to interpret it to include a range of violations based on their nature and effects, such as arbitrary arrest and detention, excessive use of force by law enforcement officials, rape and other sexual violence, torture and cruel, inhuman, or degrading treatment, and extrajudicial and summary executions, among other violations of the right to life. The terms “serious”, “grave”, “gross”, “flagrant” or “major” are often used interchangeably in characterizing the violations. Violations do not have to be systematic or widespread to be qualified as “serious”.⁵⁶

In the risk assessment, the exporting State Party must also take into account “the risk of” the arms or items “being used to commit or facilitate serious acts of **gender-based violence or serious acts of violence against women and children**”, pursuant to Article 7 (4). This requirement is yet another commendable advance of the ATT, as it represents the first time that a treaty links arms transfer decisions to the risk of gender-based violence.⁵⁷

Additionally, Article 11 (2) of the ATT requires an exporting State Party to assess “the **risk of diversion** of the export”. As explained in Section 3.4 below, although the Treaty does not define “diversion”, this term is understood to mean the transfer of arms to unauthorized recipients, including

⁵⁶ See Council of the EU, updated *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, p. 46. See also T. Karimova, “What amounts to a serious violation of human rights law?”, Geneva Academy Briefing No. 6, 2014.

⁵⁷ In their statements made upon the adoption of the ATT by the UN General Assembly, at the 71st and 72nd plenary meetings of its sixty-seventh session, held on 2 April 2013, several States welcomed the fact that the Treaty explicitly includes the risk of gender-based violence and violence against women and children among its export assessment criteria. See, for example, each of the declarations made by Iceland, Italy, Lithuania, Norway and Senegal, UN Doc. A/67/PV.72. See also UN Doc. A/67/PV.71.

diversion to the illicit market. The aims of Articles 11 and 7 are interlinked in terms of preventing the diversion of weapons to end-users where there is a risk of their committing or facilitating the serious violations listed in Article 7. While the assessment required by Article 11 (2) refers only to “conventional arms” and not to ammunition or parts and components, it would seem highly impractical for a State Party to exclude ammunition and parts and components from its diversion risk assessment, whereas it must subject these same items to the risk assessment under Article 7.

In carrying out the assessment of the proposed export of arms or items, the exporting State Party may, in accordance with Article 8 (1) of the Treaty, request from the importing State Party relevant information including “end use or end user documentation”, which the importing State Party is required to provide pursuant to its national laws.

As part of the risk assessment, the exporting State shall also consider whether there are measures it can take to mitigate the risks of the above-mentioned negative consequences, including the risk of diversion. Articles 7 (2) and 11 (2) refer in particular to “confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.” Such joint measures can be seen as part of the broader international cooperation and assistance requirements that States owe each other under Articles 15 and 16 of the Treaty.

The State Party must deny the export if, after conducting the assessment, it determines that there is an **“overriding risk” of any of the above-mentioned negative consequences**. This would appear to suggest a balancing of the interests listed in Article 7. A number of States Parties have declared upon ratification that they will interpret the term “overriding” as “substantial” or “clear”,⁵⁸ while others have stated their understanding that an “overriding risk” would exist whenever any of the negative consequences

⁵⁸ See e.g. the interpretative declaration made upon ratification by New Zealand (2 September 2014).

listed in the provision are more likely to materialize than not, even after consideration of mitigation measures.⁵⁹ In the view of the ICRC, such interpretations are consistent with the ATT's object and purpose of reducing human suffering, and States' obligation to ensure respect for international humanitarian law, a key principle which States must take into account when implementing the Treaty.⁶⁰ Such interpretations would also conform to the standards applied under regional arms transfer instruments,⁶¹ which States party to those instruments should also take into consideration when implementing Article 7.

The ICRC has proposed a range of **indicators** that States should take into account in their risk assessments in arms transfer decisions. These include: the recipient's past and present record of respect for IHL and human rights, and for taking measures to prevent violations or cause them to cease, including by punishing those responsible for these violations; the recipient's formal commitments to respect IHL and human rights, and the measures it has taken to integrate these commitments into legislation, regulations, doctrine and training applicable to its armed and security forces and other agents; and whether it has in place the necessary legal, judicial and administrative measures to repress serious violations of IHL and international human rights law, among other factors.⁶² As the exporting State Party is also required by Article 11 (2) to assess the risk of diversion of exported arms, the export assessment should also consider whether the recipient has in place a

⁵⁹ See the interpretative declarations made upon ratification by Lichtenstein (16 December 2014) and Switzerland (30 January 2015).

⁶⁰ Regarding the obligation to ensure respect for international humanitarian law as it applies to arms transfers and as a guide to interpretation and implementation of the ATT, see Sections 2.3 and 2.4.

⁶¹ In contrast to Article 7 of the ATT, none of the regional arms transfer instruments or guidelines referred to in Section 2.3 apply the notion of "overriding risk". Instead, they refer to a "clear risk" that weapons "might" be used to commit certain violations, to a "possibility" that weapons "might be used", or to the fact that the weapons are "likely to be used".

⁶² See ICRC, *Arms Transfer Decisions: Applying International Humanitarian Law and International Human Rights Law Criteria, Practical Guide*, 2nd edition, 2016. Similar indicators appear in the 2015 EU Council Common Position User's Guide. As a "major factor" for assessing the risk of "serious violations of human rights" under Criterion Two, the EU Council Common Position and its User's Guide identify the fact that competent human rights bodies of the UN, the EU and the Council of Europe have established that serious violations of human rights have taken place in the recipient country.

robust national control system including diversion-prevention measures, such as adequate stockpile management, effective export and border controls, and administrative and penal sanctions for diversion-related violations.⁶³

Regarding the potential that the arms or items *would contribute to peace and security*, in the view of the ICRC, it is difficult to see how exported weapons could ever make such a contribution in cases where there is a clear risk that they could be used to commit or facilitate serious violations of IHL or international human rights law. Such an outcome would seriously undermine the ATT's humanitarian purpose. In this respect, the Treaty's purposes of reducing human suffering and contributing to international and regional peace and security must be seen as interlinked and mutually reinforcing.⁶⁴

As for *risk mitigation measures*, they must be assessed cautiously in terms of what is realistically achievable in the circumstances to offset the risk of violations. They can be a positive tool as long as they are timely, robust and reliable, and as long as the exporter and importer have the capacity to effectively implement them, and do so in good faith. Specific risk-mitigation measures could include training by the exporting State of the recipient's armed and security forces in IHL and human rights. The ICRC in any event encourages such training.⁶⁵ However, the ability of training to effectively offset the risk of violations will depend on the circumstances, including the time lapse between the training and its practical effects. Mitigation measures may also include post-delivery verifications by the exporting State, as well as diversion-prevention measures such as end-user certificates confirming that the recipient will not re-transfer the weapons to another party, and capacity-building programmes, for example to improve the physical security and management of the recipient's stockpiled weapons. Regarding any form of assurances provided by the recipient of the weapons, these

⁶³ See, in greater detail, Section 3.4.

⁶⁴ See Article 1 of the ATT. See also the Treaty's preamble, which recalls that "peace and security and human rights are interlinked and mutually reinforcing".

⁶⁵ It should be noted that recipient States and parties to armed conflicts are in any case required, under Article 83 of Additional Protocol I and customary international humanitarian law applicable in both international and non-international armed conflicts, to provide instruction in international humanitarian law to their own armed forces.

should be viewed against its policies and practices and in any case do not replace the exporting State's obligation under Article 7 to carry out a thorough assessment of the proposed export of arms or related items.

Finally, even after a State Party has authorized an export following the risk assessment, it is "encouraged" under Article 7 (7) to reassess the authorization if it "becomes aware of new relevant information".

To fulfil the ATT's humanitarian purpose, Article 7 should be interpreted and applied in a manner that will effectively prevent serious violations of international humanitarian law, serious violations of international human rights law, gender-based violence or serious acts of violence against women and children.

To this end, the ICRC recommends that, when assessing the risk that the arms or related items proposed for export could be used to commit or facilitate any such negative consequence, the exporting State Party:

- Carefully consider the recipient's record of respect for IHL and human rights, the extent to which the recipient instructs and trains its armed and security forces to ensure such respect, its record of holding offenders accountable for violations, and its integration of its IHL and international human rights law obligations into its national legislation, military doctrine and training, as well as its diversion-prevention measures, among other factors indicated in the ICRC's Practical Guide to Arms Transfer Decisions.
- Consider any proposed mitigation measures cautiously, in the circumstances, against the recipient's policies and practices, and before taking any such measures, ensure that they are timely, robust and practical, and that both the exporting State and the recipient have the capacity to effectively implement them.
- Deny the export of arms and items when any of the serious violations or other negative consequences are more likely to materialize than not, or otherwise where there is a clear or substantial risk of such consequences.
- Even after an export has been authorized, continuously monitor the situation and cancel the authorization if new information comes to light indicating a clear or substantial risk of any of the negative consequences materializing.
- Include, as part of the Article 7 export assessment process, the diversion risk assessment required by Article 11 (2), and apply it not just to conventional arms but also to ammunition and parts and components.

3.3 Obligations relating to import, transit or trans-shipment, and brokering – Articles 8, 9, 10

The specific controls imposed on transfers and exports under Articles 6 and 7 are complemented by more general obligations imposed on States Parties that import conventional arms covered under Article 2 (1) or under whose jurisdiction arms transit or the arms trade is brokered:

- Article 8 requires each **importing** State Party to take measures, including “import systems”, allowing it to regulate “where necessary” arms imports under its jurisdiction.
- Article 9 requires each State Party to take “appropriate measures” to regulate “where necessary and feasible” the **transit or trans-shipment** of arms through its territory and under its jurisdiction.
- Article 10 requires each State Party to take measures to regulate **arms brokering**⁶⁶ taking place under its jurisdiction.

It should be recalled that each of these activities is a form of “transfer” as defined under Article 2 (2) of the ATT, and therefore they are subject to the transfer prohibition criteria of Article 6 of the Treaty applying to all transfers of conventional arms, ammunition or parts and components. While the Article 7 risk assessment applies only to the export of arms and items, the ICRC encourages each State Party to apply it to other forms of transfers, in particular to importing and brokering,⁶⁷ as is already done in practice by many States in their national control systems.

⁶⁶ Brokering is not defined by the ATT, but the 2007 UN Group of Governmental Experts on preventing illicit brokering in small arms and light weapons has stated that a “broker” is “a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise.” *Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons*, UN Doc. A/62/163, 30 August 2007.

⁶⁷ For example, EU Member States are required by the EU Council Common Position on the control of arms brokering to “assess applications for a licence or written authorisation for specific brokering transactions against” the EU Common Position on arms exports. Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering, Article 3 (1).

Articles 8, 9, and 10 require each ATT State Party to take “measures to regulate” the listed activities, in addition to applying the transfer controls under Articles 6 and 7. Regulation of these activities is also essential to prevent the diversion of weapons, as recognized in Article 11 (2) of the Treaty.

As suggested by the terms “where necessary” in Articles 8 and 9, the ATT gives some discretion to arms-importing and transit or trans-shipment States Parties on whether or not to regulate arms importing or transit under their jurisdiction, presumably because such regulation might not be needed if appropriate import and transit controls are already in place under the State Party’s existing national legislation.

Conversely, there is no such qualifier in Article 10 applying to brokering, which States Parties are obliged to regulate. However, each State Party is given discretion as to which measures it will take, with Article 10 only suggesting that they “may include requiring brokers to register or obtain written authorization before engaging in brokering activities”. In the UN Programme of Action on Small Arms and Light Weapons, States have undertaken to regulate brokering activities through the development of “adequate national legislation or administrative procedures”, which “should include measures such as registration of brokers, licensing or authorization of brokering transactions as well as the appropriate penalties for all illicit brokering activities performed within the State’s jurisdiction and control”.⁶⁸ In the view of the ICRC, they represent the minimum necessary to effectively regulate brokering.

⁶⁸ Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, UN Doc. A/CONF. 192/15, 9–20 July 2001, Part II, para. 14. These measures, among other actions, are also proposed in other international and regional instruments. In addition to such measures, Article 15 of the 2001 UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (Firearms Protocol) proposes that State Parties require “disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction.” EU Member States are legally bound to regulate brokering activities taking place within their territory by the Council Common Position on arms brokering, which requires them, inter alia, to “establish a clear legal framework for lawful brokering activities”.

It is important to note that Article 10 requires the regulation of all brokering activities taking place under the jurisdiction of the State Party, even if the physical transfer (export, import) of the weapons occurs under the jurisdiction of other States. Regulation of arms brokering is essential to ensure that the Treaty's controls on the arms trade and its humanitarian purpose are not circumvented.

For States Parties under whose jurisdiction arms transit or are trans-shipped, Article 9 further conditions the obligation to take regulatory measures on what is "feasible", acknowledging the practical challenges that many States face in monitoring the movement of goods across their territory, especially those with lengthy unguarded land borders or large spaces of territorial sea.⁶⁹ At a minimum, national laws should put those involved in transit or trans-shipment on notice that weapons crossing through the State Party's jurisdiction will be subject to the State Party's intervention if it has information that the arms or items are destined for recipients that would use them to commit acts that the ATT seeks to prevent. This is critical to achieving the Treaty's humanitarian purpose.

Information sharing between States about arms transfers is critical to fostering transparency and building confidence that weapons are being transferred responsibly in accordance with the ATT's requirements. In this regard, Articles 7 (6) and 8 (3) allow importing and transit States Parties to request information from the exporting State Party about the arms export authorization. In addition, Article 8 (1) requires an importing State Party to provide "appropriate and relevant information" upon request, including "end use or end user documentation", to the exporting State Party to assist it in conducting the export assessment under Article 7.

While Articles 8, 9, and 10 do not oblige States Parties to regulate the import, transit or trans-shipment, and brokering of ammunition or parts and components, as these provisions

⁶⁹ See *The Arms Trade Treaty* (2013): Academy Briefing No.3, Geneva Academy, June 2013, p. 32.

apply only to “conventional arms covered under Article 2 (1)”, the ICRC has recommended in Section 3.1.1 that each State Party should apply, where feasible, the same transfer regulations to ammunition and to parts and components as they do to the transfers of the arms themselves.

To fulfil the ATT’s humanitarian purpose, it is essential that all activities of the arms trade be regulated in a manner that effectively prevents weapons from ending up in the hands of those who would use them to commit serious violations of IHL or international human rights law. To this end, the ICRC recommends that each State Party:

- In addition to applying the transfer prohibitions as required by Article 6 to the import, transit or trans-shipment, and brokering of arms and items, extend the risk assessment required of exports of arms and items under Article 7 to, at a minimum, import and brokering activities.
- Require all arms brokers operating under its jurisdiction to register and be licensed under its national law, and apply strong penalties for illicit brokering activities.
- Apply the same regulatory measures to the import, transit or trans-shipment, and brokering of ammunition and parts and components as it does to conventional arms.

3.4 Preventing diversion – Article 11

One of the objectives of the ATT spelled out in Article 1 is to “prevent and eradicate the illicit trade in conventional arms and prevent their diversion.” The Treaty does not define “diversion”, nor is there an internationally agreed definition of the term, even though a number of international instruments call for measures to prevent the diversion of conventional arms.⁷⁰ The term is generally understood to mean the transfer of arms to unauthorized end-users or

⁷⁰ See the 2001 Firearms Protocol, Article 11, and the 2008 EU Common Position on arms exports, Article 2, Criterion Seven. See also the UN Programme of Action on Small Arms, Part II, paras 2 and 11.

end-uses, including but not limited to diversion to the illicit market.⁷¹

Diversion is of humanitarian concern when there is a risk that the unauthorized recipients would use the weapons to commit serious violations of IHL or serious violations of international human rights law. Moreover, diversion of weapons to the illicit trade feeds the widespread and uncontrolled availability of arms and their misuse.

Diversion can occur in the country of origin from the point of embarkation (export), en route to the authorized recipient (transit or trans-shipment), and at or shortly after the point of delivery (import). The ATT therefore recognizes that preventing the diversion of conventional arms is the responsibility of all States that have jurisdiction over the arms transfer chain, whether at the stage of export, import, transit or trans-shipment, or brokering. Article 11 (1) of the Treaty unconditionally requires each of these States Parties to take measures to prevent the diversion of weapons.

As explained in Section 3.2.2, under Article 11 (2), exporting States Parties must assess the risk of diversion of each arms export and consider establishing mitigation measures. This assessment is to be carried out through the State Party's national control system, and should logically be part of the same export assessment procedure required by Article 7. Effectively controlling arms exports is a critical means to prevent their diversion. In some cases the risk of diversion may be too high to authorize the export.⁷²

For States Parties involved in other forms of arms transfers, Article 11 does not specify which measures they should take to prevent diversion, leaving this to the discretion of each State Party. For importing States Parties in particular,

⁷¹ See *The Arms Trade Treaty (2013): Academy Briefing No.3*, Geneva Academy, June 2013, p. 33. According to the Small Arms Survey, "[T]he term 'diversion' refers to a breakdown in the transfer control chain such that, either before or after arriving at their intended destination, exported weapons are transferred to unauthorized end-users or used in violation of commitments made by end-users prior to export". *Small Arms Survey 2008: Risk and Resilience*, Cambridge University Press, 2008, p. 156.

⁷² As implied by the second sentence of Article 11(2). Examples of diversion-risk indicators and of diversion-prevention measures are given in Section 3.2.2.

diversion-prevention measures would include robust management and security of their stocks of weapons, including physical security measures, control of access to stocks, regular and comprehensive inventory management and accounting control, and staff training, as well as effective legislation for investigating and punishing theft, corruption and other diversion-related offences.⁷³ Providing end-user and end-use certificates, strengthening border patrols and controls, and having in place strong export controls as part of their national control system also constitute fundamental diversion-prevention measures for importing States Parties. The establishment of a system to regulate the transit and trans-shipment of weapons is also a measure a State Party can take to prevent their diversion.

To be effective, many of these diversion-prevention measures rely on close cooperation and information-sharing between all of the States involved in the arms transfer chain, a fact recognized by Article 11 (3), which requires such cooperation and information exchange “where appropriate and feasible”. Article 11 (5) provides a non-exhaustive list of information that States Parties are encouraged to share with one another to help them better understand and prevent the diversion of weapons, including information on international trafficking routes, illicit brokers, sources of illicit supply, and methods of concealment.

If a State Party detects a diversion of transferred weapons, Article 11 (4) requires it to “take appropriate measures”, including pursuing investigations and law enforcement.

While Article 11 does not oblige State Parties to take measures to prevent the diversion of ammunition or parts and components, referring only to “conventional arms covered under Article 2 (1)”, the ICRC has recommended in Section 3.1.1 that each State Party apply the same diversion-prevention measures to transfers of ammunition and parts and components as it applies to transfers of the conventional arms themselves.

⁷³ See UN Programme of Action on Small Arms, Part II, para. 17.

Preventing the diversion of authorized arms transfers is crucial to ensuring the effectiveness of the ATT and to fulfilling its humanitarian objectives. To this end, the ICRC recommends that each State Party:

- Establish and enforce measures to ensure that all arms, ammunition and parts and components transferred under its jurisdiction reach and remain with the authorized recipient, including legislation allowing effective investigation and punishment of violations.
- Take measures to effectively prevent the diversion of transferred weapons, including the robust management and security of the stocks of arms, ammunition and parts and components held within their territory, the provision of end-user and end-use certificates for imported arms and items, the strengthening of border patrols and controls, and the effective regulation of transit and trans-shipment of arms and items.
- Share information with other States relevant to the risks of diversion of arms and items, and cooperate with other States in implementing diversion-prevention measures.
- Apply the same measures to prevent the diversion of ammunition and parts and components as it does to conventional arms.

3.5 Ensuring implementation and compliance

The effective implementation and enforcement of the ATT at the national level, and cooperation among States Parties and transparency in the arms trade at the international level, are essential to achieving the Treaty's objectives and to fulfilling its humanitarian purpose.

As explained in Section 2.4, the ATT must be implemented in a consistent, objective and non-discriminatory manner, bearing in mind the Treaty's principles, which include ensuring respect for IHL and international human rights law. This is the overarching guideline for national implementation set out in Article 5 (1) of the Treaty.

Effective cooperation and assistance between States Parties will depend on a high degree of openness and transparency, through, for example, their initial and annual reports and the information they share during the arms

transfer process and in meetings of the Conference of States Parties and its subsidiary bodies. Transparency towards other States Parties and the public demonstrates a State Party's commitment to a responsible arms trade and is critical to building confidence in the Treaty and ensuring its success.

Below is an outline of the ATT's implementation and compliance requirements. For a list of sources providing further information and tools to assist States in the implementation of the ATT, see [Annex II](#).

Achieving the Treaty's objectives and humanitarian purpose will require that States Parties:

- Adopt a comprehensive legal and regulatory framework to effectively implement and enforce the ATT at the national level.
- Afford one another the highest degree of cooperation and assistance at the international level.
- Apply a high degree of openness and transparency in the implementation of the Treaty, notably through reporting and information sharing.

For each of these aims, the Treaty's provisions call on States Parties, in either mandatory or optional terms, to take a number of general and specific implementation and compliance measures, the key elements of which are outlined in this section.

- The ICRC urges each State Party to effectively and comprehensively apply all of the implementation, cooperation, assistance and transparency measures called for by the ATT, including those formulated in optional terms, thereby ensuring that the ATT fulfils its promise of establishing the highest possible standards for regulating the international arms trade and of reducing human suffering.

3.5.1 National control system and national enforcement – Articles 5, 12 and 14

Article 5 (2) requires each State Party to establish a **national control system** to implement the provisions of the ATT, including the transfer prohibitions under Article 6 and the risk assessments required by Articles 7 and 11 (2). This implies that each State Party should establish a comprehensive legal and regulatory framework.

As part of its national control system, each State Party must:

- Establish a **national control list** of the conventional arms and items that are subject to the national control system, pursuant to Article 5 (2).
 - The national control list must, at a minimum, cover **all conventional arms** set out in Articles 2 (1) and 5 (3) and **the ammunition and parts and components** defined in Articles 3 and 4. Beyond this baseline requirement, each State Party “is encouraged” to apply the provisions of the Treaty “to the broadest range of conventional arms”.⁷⁴
 - The national control list must be provided to the ATT’s Secretariat, which shall make it available to other States Parties, and Article 5 (4) encourages States Parties to make their control lists publicly available.

- Designate **competent national authorities**, pursuant to Article 5 (5), to ensure “an effective and transparent national control system regulating the transfer” of conventional arms and items. The national authorities must be empowered, among other tasks, to:
 - consider applications for transfer authorizations or licences, in accordance with the Article 6 transfer prohibitions and the export risk assessments under Articles 7 and 11 (2)⁷⁵; and

⁷⁴ See Section 3.1 and the recommendations therein.

⁷⁵ See Sections 3.2 and 3.4 and the recommendations therein.

- Regulate the import, transit or trans-shipment, and brokering of weapons, in accordance with Articles 8, 9 and 10.⁷⁶

- Designate one or more **national points of contact**, pursuant to Article 5 (6), to “exchange information on matters related to the implementation of th[e] Treaty”, and to notify the ATT Secretariat of these points of contact. Examples of exchanges of information as stipulated by the ATT include: information from the importing State Party to the exporting State Party to assist the latter in carrying out its export assessment;⁷⁷ information about export authorizations from the exporting State Party to importing or transit and trans-shipment States Parties;⁷⁸ and information to mitigate the risk of diversion of weapons.⁷⁹
- Maintain **national records** of its issuance of export authorizations or its actual arms exports. Such records are needed for the purposes of the annual reports required of each State Party under Article 13 (3). Article 12 further “encourages” each State Party to keep records on imported arms and on arms authorized for transit or trans-shipment.
- Take “appropriate measures to **enforce national laws and regulations** that implement” the ATT’s provisions, as required by Article 14. The aim of such national laws and regulations is to ensure respect for the Treaty by natural and legal persons within the jurisdiction of the State Party. For this purpose, the laws and regulations would need to include administrative penalties and penal sanctions to enforce the Treaty’s requirements, for example, against those who would transfer arms from a State Party’s jurisdiction without its authorization.⁸⁰

Apart from the above minimum requirements, the ATT leaves considerable discretion to each State Party to determine

⁷⁶ See Section 3.3 and the recommendations therein.

⁷⁷ In accordance with Article 8 (1).

⁷⁸ In accordance with Articles 7 (6) and 8 (3).

⁷⁹ In accordance with Articles 11 (3) and 11 (6). See also Article 13 (2), which encourages States Parties to report on good practices in diversion prevention.

⁸⁰ Article 11 (4) refers to “investigation and law enforcement” as a measure that a State Party may take if it detects a diversion of transferred arms.

the exact form, structure and legislative foundation of its national control system. In practice, implementation will require a series of legislative, administrative and practical measures, the scope of which will depend on what transfer-control and diversion-prevention measures a State already has in place when it becomes party to the Treaty and whether these are compatible with the Treaty's minimum requirements.⁸¹

To achieve consistency, objectivity and non-discrimination in the implementation of the ATT, it is important that national implementing legislation and regulations set out clear guidance on the interpretation and application of the Treaty's transfer prohibitions under Article 6 and its export criteria under Article 7 and Article 11 (2), and, in so doing, establish a predictable process and objective indicators to facilitate national authorities' transfer decisions.⁸²

3.5.2 Transparency, international cooperation and assistance and confidence-building – Articles 13, 15, 16 and 17

Disclosure of information on the ATT's implementation is a critical means of ensuring transparency and responsible arms transfers by States Parties, a key purpose of the Treaty. The sharing of information on implementation also facilitates cooperation and assistance among States Parties, allowing them to identify needs and good practices.

Article 13 of the ATT requires each State Party to report on its implementation measures, and in particular to:

→ Provide an **initial report** to the ATT Secretariat, within the first year after the Treaty's entry into force for it, of the measures it has taken to implement the Treaty, "including national laws, national control lists, and other regulations and administrative measures". After this initial

⁸¹ For example, a State Party that is also a member of the EU would already have in place an export-control mechanism to assess whether there is a clear risk of serious violations of international humanitarian law, pursuant to the criteria of the EU Common Position on arms exports. It would nonetheless need to thoroughly review its existing legislation to determine whether any additional measures may be required by the ATT.

⁸² The ICRC's *Practical Guide on Arms Transfer Decisions*, 2nd edition, 2016, provides guidance and indicators on applying international humanitarian law and international human rights law criteria in arms-transfer decisions.

report, each State Party must provide updates “when appropriate” on any new measures it undertakes to implement the treaty.

→ Submit an **annual report** to the ATT Secretariat, due on 31 May of each year, on all “authorized or actual” exports and imports of conventional arms for the preceding calendar year. Article 13 (3) specifies that the annual reports may contain the same information submitted by the State Party to relevant UN frameworks, including the UN Register of Conventional Arms. It also allows the State Party to exclude from its annual report “commercially sensitive or national security information”. In the view of the ICRC, these terms must not be interpreted in a manner that would amount to non-disclosure of authorized or actual exports or imports of weapons, as this would contradict the mandatory requirement of annual reporting on these transfers and obviate the Treaty’s purpose of transparency.⁸³

Article 13 provides that these initial and annual reports “shall be made available, and distributed to States Parties by the Secretariat”. It is unclear whether these terms mean that the reports are to be made available only to States Parties, or whether they are to be made public. At any rate, the ICRC is of the view that making initial and annual reports **publicly available** is an essential means of developing a culture of responsibility and accountability in the international arms trade.

⁸³ On this particular issue, in its statement after the adoption of the ATT by the UN General Assembly at the 71st meeting of its sixty-seventh session, on 2 April 2013, New Zealand said that “[T]ransparency will be pivotal to effective implementation of the ATT. We see no justification for any state withholding information relating to its conventional arms transfers, either on the basis of commercial sensitivity or national security.” UN Doc. A/67/PV.72, p. 3.

Articles 15 and 16 of the ATT establish a general framework for international cooperation and assistance among States Parties to promote effective implementation of the Treaty:

- States Parties have a general obligation to **cooperate** with each other, “consistent with their respective security interests and national laws”, to effectively implement the Treaty, pursuant to Article 15 (1).
- States Parties must also “afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations” of national implementation measures, subject to their joint agreement and national laws, pursuant to Article 15 (5).
- Under Article 15, States Parties are also “encouraged” to cooperate in a number of ways to support the implementation of the Treaty, including by exchanging experience and information on lessons learned. For example, States Parties may share their experiences in establishing effective mechanisms and procedures to implement the arms transfer prohibitions and risk assessments required by Articles 6, 7 and 11 (2) of the Treaty.
- Each State Party may, under Article 16, seek the **assistance** of other States Parties, including legal assistance, institutional capacity-building and technical, material and financial assistance. The States Parties “in a position to do so shall provide such assistance, upon request” under Article 16 (1).

In order to facilitate compliance monitoring, Article 17 of the ATT sets up the **Conference of States Parties**, a forum in which States Parties meet regularly to review the implementation of the Treaty, consider and adopt recommendations regarding the implementation and operation of the Treaty, and consider issues arising from the interpretation of the Treaty, among other tasks. A strong level of openness and transparency in the implementation of these tasks by the Conference of States Parties will also be essential to building the confidence necessary for the Treaty’s success.

KEEPING THE PROMISE
PROMOTING
THE ARMS TRADE
TREATY

The adoption of the Arms Trade Treaty has created a historic opportunity to reduce the human cost of the widespread and poorly regulated availability of conventional weapons. If the Treaty is to fulfil this promise, a tremendous amount of work remains to be done.

States, National Red Cross and Red Crescent Societies and civil society all have a role to play in promoting public awareness of the consequences, in humanitarian terms, of insufficiently regulated arms transfers and in **encouraging all States to join the ATT**.⁸⁴

As explained in Section 3.5, the ATT requires each State Party to undertake **a wide range of implementation measures**. A key measure is setting up a robust and transparent national control system, with national authorities empowered to thoroughly and effectively control transfers of conventional arms, ammunition and parts and components on the basis of respect for IHL and human rights. For this purpose, States Parties may require **technical, legal and financial assistance**.

Within the limits of its mandate and expertise in IHL, the ICRC can provide guidance to governments on incorporating the ATT's requirements into domestic legislation, in particular the Treaty's arms transfer criteria based on respect for IHL and human rights. For this purpose, the ICRC has published a practical guide entitled *Arms Transfer Decisions – Applying International Humanitarian Law and International Human Rights Law Criteria*.

A number of other organizations offer expert advice and tools to help States implement the ATT. These resources are listed in **Annex II**.

⁸⁴ The status of signatures and ratifications of the ATT is available online at <https://www.un.org/disarmament/convarms/ATT>. On the same site, the UN Office for Disarmament Affairs has published a guide (How to Accede to the Arms Trade Treaty: A Step-by-Step Guide) describing the procedures that States must follow in order to adhere to the ATT. The guide also contains model instruments of adherence for States to deposit with the UN Secretary-General.

By adopting the ATT, States have recognized that arms and ammunition can no longer be regarded as just another form of commercial goods. They have recognized that weapons transfers require particular caution and due diligence because of the irreparable harm that can be caused when the weapons fall into the wrong hands. And they have recognized that the responsibility of States to respect and ensure respect for IHL and human rights law requires responsible arms transfers.

Implemented in a consistent, objective and non-discriminatory manner in accordance with its humanitarian purpose, the ATT will go a long way towards protecting civilians and societies from the incalculable human, social and economic costs of unregulated arms availability.

ANNEX I

**THE ARMS TRADE
TREATY**

Preamble

The States Parties to this Treaty,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling Article 26 of the Charter of the United Nations which seeks to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources,

Underlining the need to prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market, or for unauthorized end use and end users, including in the commission of terrorist acts,

Recognizing the legitimate political, security, economic and commercial interests of States in the international trade in conventional arms,

Reaffirming the sovereign right of any State to regulate and control conventional arms exclusively within its territory, pursuant to its own legal or constitutional system,

Acknowledging that peace and security, development and human rights are pillars of the United Nations system and foundations for collective security and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

Recalling the United Nations Disarmament Commission Guidelines for international arms transfers in the context of General Assembly resolution 46/36H of 6 December 1991,

Noting the contribution made by the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, as well as the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, and the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons,

Recognizing the security, social, economic and humanitarian consequences of the illicit and unregulated trade in conventional arms,

Bearing in mind that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict and armed violence,

Recognizing also the challenges faced by victims of armed conflict and their need for adequate care, rehabilitation and social and economic inclusion,

Emphasizing that nothing in this Treaty prevents States from maintaining and adopting additional effective measures to further the object and purpose of this Treaty,

Mindful of the legitimate trade and lawful ownership, and use of certain conventional arms for recreational, cultural, historical, and sporting activities, where such trade, ownership and use are permitted or protected by law,

Mindful also of the role regional organizations can play in assisting States Parties, upon request, in implementing this Treaty,

Recognizing the voluntary and active role that civil society, including non-governmental organizations, and industry, can play in raising awareness of the object and purpose of this Treaty, and in supporting its implementation,

Acknowledging that regulation of the international trade in conventional arms and preventing their diversion should not hamper international cooperation and legitimate trade in materiel, equipment and technology for peaceful purposes,

Emphasizing the desirability of achieving universal adherence to this Treaty,

Determined to act in accordance with the following principles;

Principles

- The inherent right of all States to individual or collective self-defence as recognized in Article 51 of the Charter of the United Nations;
- The settlement of international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered in accordance with Article 2 (3) of the Charter of the United Nations;
- Refraining in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations in accordance with Article 2 (4) of the Charter of the United Nations;

- Non-intervention in matters which are essentially within the domestic jurisdiction of any State in accordance with Article 2 (7) of the Charter of the United Nations;
- Respecting and ensuring respect for international humanitarian law in accordance with, inter alia, the Geneva Conventions of 1949, and respecting and ensuring respect for human rights in accordance with, inter alia, the Charter of the United Nations and the Universal Declaration of Human Rights;
- The responsibility of all States, in accordance with their respective international obligations, to effectively regulate the international trade in conventional arms, and to prevent their diversion, as well as the primary responsibility of all States in establishing and implementing their respective national control systems;
- The respect for the legitimate interests of States to acquire conventional arms to exercise their right to self-defence and for peacekeeping operations; and to produce, export, import and transfer conventional arms;
- Implementing this Treaty in a consistent, objective and non-discriminatory manner,

Have agreed as follows:

Article 1

Object and Purpose

The object of this Treaty is to:

- Establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms;
- Prevent and eradicate the illicit trade in conventional arms and prevent their diversion;

for the purpose of:

- Contributing to international and regional peace, security and stability;
- Reducing human suffering;
- Promoting cooperation, transparency and responsible action by States Parties in the international trade in conventional arms, thereby building confidence among States Parties.

Article 2

Scope

1. This Treaty shall apply to all conventional arms within the following categories:
 - (a) Battle tanks;
 - (b) Armoured combat vehicles;
 - (c) Large-calibre artillery systems;
 - (d) Combat aircraft;
 - (e) Attack helicopters;
 - (f) Warships;
 - (g) Missiles and missile launchers; and
 - (h) Small arms and light weapons.
2. For the purposes of this Treaty, the activities of the international trade comprise export, import, transit, trans-shipment and brokering, hereafter referred to as “transfer”.
3. This Treaty shall not apply to the international movement of conventional arms by, or on behalf of, a State Party for its use provided that the conventional arms remain under that State Party’s ownership.

Article 3

Ammunition/Munitions

Each State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms covered under Article 2 (1), and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such ammunition/munitions.

Article 4

Parts and Components

Each State Party shall establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2 (1) and shall apply the provisions of Article 6 and Article 7 prior to authorizing the export of such parts and components.

Article 5

General Implementation

1. Each State Party shall implement this Treaty in a consistent, objective and non-discriminatory manner, bearing in mind the principles referred to in this Treaty.
2. Each State Party shall establish and maintain a national control system, including a national control list, in order to implement the provisions of this Treaty.
3. Each State Party is encouraged to apply the provisions of this Treaty to the broadest range of conventional arms. National definitions of any of the categories covered under Article 2 (1) (a)-(g) shall not cover less than the descriptions used in the United Nations Register of Conventional Arms at the time of entry into force of this Treaty. For the category covered under Article 2 (1) (h), national definitions shall not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force of this Treaty.
4. Each State Party, pursuant to its national laws, shall provide its national control list to the Secretariat, which shall make it available to other States Parties. States Parties are encouraged to make their control lists publicly available.
5. Each State Party shall take measures necessary to implement the provisions of this Treaty and shall designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms covered under Article 2 (1) and of items covered under Article 3 and Article 4.
6. Each State Party shall designate one or more national points of contact to exchange information on matters related to the implementation of this Treaty. Each State Party shall notify the Secretariat, established under Article 18, of its national point(s) of contact and keep the information updated.

Article 6

Prohibitions

1. A State Party shall not authorize any transfer of conventional arms, covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes.
2. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if the transfer would violate its relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms.

3. A State Party shall not authorize any transfer of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, if it has knowledge at the time of authorization that the arms or items would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.

Article 7

Export and Export Assessment

1. If the export is not prohibited under Article 6, each exporting State Party, prior to authorization of the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4, under its jurisdiction and pursuant to its national control system, shall, in an objective and non-discriminatory manner, taking into account relevant factors, including information provided by the importing State in accordance with Article 8 (1), assess the potential that the conventional arms or items:
 - (a) would contribute to or undermine peace and security;
 - (b) could be used to:
 - (i) commit or facilitate a serious violation of international humanitarian law;
 - (ii) commit or facilitate a serious violation of international human rights law;
 - (iii) commit or facilitate an act constituting an offence under international conventions or protocols relating to terrorism to which the exporting State is a Party; or
 - (iv) commit or facilitate an act constituting an offence under international conventions or protocols relating to transnational organized crime to which the exporting State is a Party.
2. The exporting State Party shall also consider whether there are measures that could be undertaken to mitigate risks identified in (a) or (b) in paragraph 1, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.
3. If, after conducting this assessment and considering available mitigating measures, the exporting State Party determines that there is an overriding risk of any of the negative consequences in paragraph 1, the exporting State Party shall not authorize the export.
4. The exporting State Party, in making this assessment, shall take into account the risk of the conventional arms covered under Article 2 (1) or of the items covered under Article 3 or Article 4 being used to commit or facilitate serious acts of gender-based violence or serious acts of violence against women and children.

5. Each exporting State Party shall take measures to ensure that all authorizations for the export of conventional arms covered under Article 2 (1) or of items covered under Article 3 or Article 4 are detailed and issued prior to the export.
6. Each exporting State Party shall make available appropriate information about the authorization in question, upon request, to the importing State Party and to the transit or trans-shipment States Parties, subject to its national laws, practices or policies.
7. If, after an authorization has been granted, an exporting State Party becomes aware of new relevant information, it is encouraged to reassess the authorization after consultations, if appropriate, with the importing State.

Article 8

Import

1. Each importing State Party shall take measures to ensure that appropriate and relevant information is provided, upon request, pursuant to its national laws, to the exporting State Party, to assist the exporting State Party in conducting its national export assessment under Article 7. Such measures may include end use or end user documentation.
2. Each importing State Party shall take measures that will allow it to regulate, where necessary, imports under its jurisdiction of conventional arms covered under Article 2 (1). Such measures may include import systems.
3. Each importing State Party may request information from the exporting State Party concerning any pending or actual export authorizations where the importing State Party is the country of final destination.

Article 9

Transit or trans-shipment

Each State Party shall take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of conventional arms covered under Article 2 (1) through its territory in accordance with relevant international law.

Article 10

Brokering

Each State Party shall take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction for conventional arms covered under Article 2 (1). Such measures may include requiring brokers to register or obtain written authorization before engaging in brokering.

Article 11

Diversion

1. Each State Party involved in the transfer of conventional arms covered under Article 2 (1) shall take measures to prevent their diversion.
2. The exporting State Party shall seek to prevent the diversion of the transfer of conventional arms covered under Article 2 (1) through its national control system, established in accordance with Article 5 (2), by assessing the risk of diversion of the export and considering the establishment of mitigation measures such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States. Other prevention measures may include, where appropriate: examining parties involved in the export, requiring additional documentation, certificates, assurances, not authorizing the export or other appropriate measures.
3. Importing, transit, trans-shipment and exporting States Parties shall cooperate and exchange information, pursuant to their national laws, where appropriate and feasible, in order to mitigate the risk of diversion of the transfer of conventional arms covered under Article 2 (1).
4. If a State Party detects a diversion of transferred conventional arms covered under Article 2 (1), the State Party shall take appropriate measures, pursuant to its national laws and in accordance with international law, to address such diversion. Such measures may include alerting potentially affected States Parties, examining diverted shipments of such conventional arms covered under Article 2 (1), and taking follow-up measures through investigation and law enforcement.
5. In order to better comprehend and prevent the diversion of transferred conventional arms covered under Article 2 (1), States Parties are encouraged to share relevant information with one another on effective measures to address diversion. Such information may include information on illicit activities including corruption, international trafficking routes, illicit brokers, sources of illicit supply, methods of concealment, common points of dispatch, or destinations used by organized groups engaged in diversion.

6. States Parties are encouraged to report to other States Parties, through the Secretariat, on measures taken in addressing the diversion of transferred conventional arms covered under Article 2 (1).

Article 12

Record keeping

1. Each State Party shall maintain national records, pursuant to its national laws and regulations, of its issuance of export authorizations or its actual exports of the conventional arms covered under Article 2 (1).
2. Each State Party is encouraged to maintain records of conventional arms covered under Article 2 (1) that are transferred to its territory as the final destination or that are authorized to transit or trans-ship territory under its jurisdiction.
3. Each State Party is encouraged to include in those records: the quantity, value, model/type, authorized international transfers of conventional arms covered under Article 2 (1), conventional arms actually transferred, details of exporting State(s), importing State(s), transit and trans-shipment State(s), and end users, as appropriate.
4. Records shall be kept for a minimum of ten years.

Article 13

Reporting

1. Each State Party shall, within the first year after entry into force of this Treaty for that State Party, in accordance with Article 22, provide an initial report to the Secretariat of measures undertaken in order to implement this Treaty, including national laws, national control lists and other regulations and administrative measures. Each State Party shall report to the Secretariat on any new measures undertaken in order to implement this Treaty, when appropriate. Reports shall be made available, and distributed to States Parties by the Secretariat.
2. States Parties are encouraged to report to other States Parties, through the Secretariat, information on measures taken that have been proven effective in addressing the diversion of transferred conventional arms covered under Article 2 (1).
3. Each State Party shall submit annually to the Secretariat by 31 May a report for the preceding calendar year concerning authorized or actual exports and imports of conventional arms covered under Article 2 (1). Reports shall be made available, and distributed to States Parties by the Secretariat. The report submitted to the Secretariat may contain the same information submitted by the State Party to relevant United

Nations frameworks, including the United Nations Register of Conventional Arms. Reports may exclude commercially sensitive or national security information.

Article 14

Enforcement

Each State Party shall take appropriate measures to enforce national laws and regulations that implement the provisions of this Treaty.

Article 15

International Cooperation

1. States Parties shall cooperate with each other, consistent with their respective security interests and national laws, to effectively implement this Treaty.
2. States Parties are encouraged to facilitate international cooperation, including exchanging information on matters of mutual interest regarding the implementation and application of this Treaty pursuant to their respective security interests and national laws.
3. States Parties are encouraged to consult on matters of mutual interest and to share information, as appropriate, to support the implementation of this Treaty.
4. States Parties are encouraged to cooperate, pursuant to their national laws, in order to assist national implementation of the provisions of this Treaty, including through sharing information regarding illicit activities and actors and in order to prevent and eradicate diversion of conventional arms covered under Article 2 (1).
5. States Parties shall, where jointly agreed and consistent with their national laws, afford one another the widest measure of assistance in investigations, prosecutions and judicial proceedings in relation to violations of national measures established pursuant to this Treaty.
6. States Parties are encouraged to take national measures and to cooperate with each other to prevent the transfer of conventional arms covered under Article 2 (1) becoming subject to corrupt practices.
7. States Parties are encouraged to exchange experience and information on lessons learned in relation to any aspect of this Treaty.

Article 16

International Assistance

1. In implementing this Treaty, each State Party may seek assistance including legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance. Such assistance may include stockpile management, disarmament, demobilization and reintegration programmes, model legislation, and effective practices for implementation. Each State Party in a position to do so shall provide such assistance, upon request.
2. Each State Party may request, offer or receive assistance through, inter alia, the United Nations, international, regional, subregional or national organizations, non-governmental organizations, or on a bilateral basis.
3. A voluntary trust fund shall be established by States Parties to assist requesting States Parties requiring international assistance to implement this Treaty. Each State Party is encouraged to contribute resources to the fund.

Article 17

Conference of States Parties

1. A Conference of States Parties shall be convened by the provisional Secretariat, established under Article 18, no later than one year following the entry into force of this Treaty and thereafter at such other times as may be decided by the Conference of States Parties.
2. The Conference of States Parties shall adopt by consensus its rules of procedure at its first session.
3. The Conference of States Parties shall adopt financial rules for itself as well as governing the funding of any subsidiary bodies it may establish as well as financial provisions governing the functioning of the Secretariat. At each ordinary session, it shall adopt a budget for the financial period until the next ordinary session.
4. The Conference of States Parties shall:
 - (a) Review the implementation of this Treaty, including developments in the field of conventional arms;
 - (b) Consider and adopt recommendations regarding the implementation and operation of this Treaty, in particular the promotion of its universality;
 - (c) Consider amendments to this Treaty in accordance with Article 20;
 - (d) Consider issues arising from the interpretation of this Treaty;
 - (e) Consider and decide the tasks and budget of the Secretariat;

- (f) Consider the establishment of any subsidiary bodies as may be necessary to improve the functioning of this Treaty; and
 - (g) Perform any other function consistent with this Treaty.
5. Extraordinary meetings of the Conference of States Parties shall be held at such other times as may be deemed necessary by the Conference of States Parties, or at the written request of any State Party provided that this request is supported by at least two-thirds of the States Parties.

Article 18

Secretariat

1. This Treaty hereby establishes a Secretariat to assist States Parties in the effective implementation of this Treaty. Pending the first meeting of the Conference of States Parties, a provisional Secretariat will be responsible for the administrative functions covered under this Treaty.
2. The Secretariat shall be adequately staffed. Staff shall have the necessary expertise to ensure that the Secretariat can effectively undertake the responsibilities described in paragraph 3.
3. The Secretariat shall be responsible to States Parties. Within a minimized structure, the Secretariat shall undertake the following responsibilities:
 - (a) Receive, make available and distribute the reports as mandated by this Treaty;
 - (b) Maintain and make available to States Parties the list of national points of contact;
 - (c) Facilitate the matching of offers of and requests for assistance for Treaty implementation and promote international cooperation as requested;
 - (d) Facilitate the work of the Conference of States Parties, including making arrangements and providing the necessary services for meetings under this Treaty; and
 - (e) Perform other duties as decided by the Conferences of States Parties.

Article 19

Dispute Settlement

1. States Parties shall consult and, by mutual consent, cooperate to pursue settlement of any dispute that may arise between them with regard to the interpretation or application of this Treaty including through negotiations, mediation, conciliation, judicial settlement or other peaceful means.

2. States Parties may pursue, by mutual consent, arbitration to settle any dispute between them, regarding issues concerning the interpretation or application of this Treaty.

Article 20

Amendments

1. Six years after the entry into force of this Treaty, any State Party may propose an amendment to this Treaty. Thereafter, proposed amendments may only be considered by the Conference of States Parties every three years.
2. Any proposal to amend this Treaty shall be submitted in writing to the Secretariat, which shall circulate the proposal to all States Parties, not less than 180 days before the next meeting of the Conference of States Parties at which amendments may be considered pursuant to paragraph 1. The amendment shall be considered at the next Conference of States Parties at which amendments may be considered pursuant to paragraph 1 if, no later than 120 days after its circulation by the Secretariat, a majority of States Parties notify the Secretariat that they support consideration of the proposal.
3. The States Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall, as a last resort, be adopted by a three-quarters majority vote of the States Parties present and voting at the meeting of the Conference of States Parties. For the purposes of this Article, States Parties present and voting means States Parties present and casting an affirmative or negative vote. The Depositary shall communicate any adopted amendment to all States Parties.
4. An amendment adopted in accordance with paragraph 3 shall enter into force for each State Party that has deposited its instrument of acceptance for that amendment, ninety days following the date of deposit with the Depositary of the instruments of acceptance by a majority of the number of States Parties at the time of the adoption of the amendment. Thereafter, it shall enter into force for any remaining State Party ninety days following the date of deposit of its instrument of acceptance for that amendment.

Article 21

Signature, Ratification, Acceptance, Approval or Accession

1. This Treaty shall be open for signature at the United Nations Headquarters in New York by all States from 3 June 2013 until its entry into force.
2. This Treaty is subject to ratification, acceptance or approval by each signatory State.

3. Following its entry into force, this Treaty shall be open for accession by any State that has not signed the Treaty.
4. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Article 22

Entry into Force

1. This Treaty shall enter into force ninety days following the date of the deposit of the fiftieth instrument of ratification, acceptance or approval with the Depositary.
2. For any State that deposits its instrument of ratification, acceptance, approval or accession subsequent to the entry into force of this Treaty, this Treaty shall enter into force for that State ninety days following the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 23

Provisional Application

Any State may at the time of signature or the deposit of its instrument of ratification, acceptance, approval or accession, declare that it will apply provisionally Article 6 and Article 7 pending the entry into force of this Treaty for that State.

Article 24

Duration and Withdrawal

1. This Treaty shall be of unlimited duration.
2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty. It shall give notification of such withdrawal to the Depositary, which shall notify all other States Parties. The notification of withdrawal may include an explanation of the reasons for its withdrawal. The notice of withdrawal shall take effect ninety days after the receipt of the notification of withdrawal by the Depositary, unless the notification of withdrawal specifies a later date.
3. A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Treaty while it was a Party to this Treaty, including any financial obligations that it may have accrued.

Article 25

Reservations

1. At the time of signature, ratification, acceptance, approval or accession, each State may formulate reservations, unless the reservations are incompatible with the object and purpose of this Treaty.
2. A State Party may withdraw its reservation at any time by notification to this effect addressed to the Depositary.

Article 26

Relationship with other international agreements

1. The implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing or future international agreements, to which they are parties, where those obligations are consistent with this Treaty.
2. This Treaty shall not be cited as grounds for voiding defence cooperation agreements concluded between States Parties to this Treaty.

Article 27

Depositary

The Secretary-General of the United Nations shall be the Depositary of this Treaty.

Article 28

Authentic Texts

The original text of this Treaty, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

ANNEX II

**ADDITIONAL
RESOURCES
ON THE ATT**

ICRC

ICRC, *Arms Transfer Decisions: Applying International Humanitarian Law and International Human Rights Law Criteria, Practical Guide*, 2nd edition, 2016.

ICRC, 2013 Arms Trade Treaty- Factsheet, 31 December 2013.

ICRC, 'Protecting civilians and humanitarian action through the Arms Trade Treaty', 15 December 2013.

ICRC, *The Arms Trade Treaty: Keeping the Promise*, Film Ref. AV002B, 27 May 2013.

Other resources

Acheson, Ray, *Gender-Based Violence and the Arms Trade Treaty*, Reaching Critical Will of the Women's International League for Peace and Freedom, 2015.

Amnesty International, *Applying the Arms Trade Treaty to Ensure the Protection of Human Rights*, 2015.

Casey-Maslen, Stuart; Giacca, Gilles; Vestner, Tobias, *The Arms Trade Treaty (2013) Academy Briefing No.3*, Geneva Academy, June 2013.

Casey-Maslen, Stuart; Clapham, Andrew; Giacca, Gilles; and Parker, Sarah, *The Arms Trade Treaty: A Commentary*, Oxford University Press, 2016.

ISS Guide, 'Arms Trade Treaty: Ratification and implementation guide for African States', November 2014.

PGA Parliamentary Handbook, *Promoting Signature, Ratification and Implementation of the Arms Trade Treaty*, July 2013.

Saferworld, *Key issues for ATT implementation: Preventing and combating diversion*, February 2015.

Saferworld, *Prevention, transit and innocent passage under the Arms Trade Treaty*, August 2015.
Saferworld, *Implementing the ATT: Developing brokering controls in less capacitated States*, November 2015.

Small arms survey. *Arms Trade Treaty: Model Law for Pacific States*, October 2014.

Small Arms Survey, *The Arms Trade Treaty: A Practical Guide to National Implementation*, edited by Sarah Parker, August 2016.

UN Office of Disarmament Affairs, *How to accede to the Arms Trade Treaty: a step-by-step guide*, 2013.

UNODA, *ATT Implementation Toolkit, Modules 1-10*, 2015. For other resources see the UNODA website.

MISSION

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.



ICRC