

**Second Biennial Meeting of States  
to Consider the Implementation of the United Nations Programme of Action to  
Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons  
in All Its Aspects**

**International Committee of the Red Cross (ICRC)**

Statement during thematic debate, 15 July 2005

Import/export control

Mr. Chairman,

We would like to first thank you for the opportunity to present our views in this thematic debate. I would like to use this occasion to elaborate on one of the issues briefly mentioned in our general statement earlier this week.

In section II, paragraph 11 of the Programme of Action, States undertake "*to assess applications for export authorizations according to strict national regulations and procedures (...) consistent with the existing responsibilities of States under international law (...)*".

As many of the delegations have already stated during this thematic debate, one of the existing **legal responsibilities of States relevant to the assessment of export authorizations** is their obligation to "respect and ensure respect" for international humanitarian law (under Article 1 common to the Geneva Conventions of 1949).

When military weapons or equipment are transferred to a recipient, a State is providing the recipient with the means to engage in armed conflict, the conduct of which is regulated by international humanitarian law. Arms transfer decisions must therefore include a consideration of whether the recipient is likely to respect this law in order **to ensure that violations of humanitarian law are not facilitated by unregulated access to arms and ammunition.**

In light of this, the International Committee of the Red Cross has been encouraged to note that requirements to consider the recipient's respect for humanitarian law has been incorporated into several national laws and regional regulations on arms transfers. This includes laws adopted by the United Kingdom and Germany and regional Codes of Conduct or Model Regulations adopted in the framework of the OSCE, EU, OAS, and the Nairobi Protocol. Furthermore, in the Agenda for Humanitarian Action adopted by the Red Cross and Red Crescent Conference in 2003, States Parties to the Geneva Conventions undertook to make respect for humanitarian law one of the fundamental criteria on which arms transfer decisions are assessed and were encouraged to incorporate such criteria in both national laws or policies and regional and global norms.

We have compiled a list of existing references to humanitarian law in arms transfer documents, which is available at the back of the room. If any State here has national arms transfer legislation or regulations that refer to humanitarian law, but which is not included in this list, we would very much appreciate if you could draw this to our attention so that we can include your law in the next version of this list.

Despite the positive developments just mentioned however, much more remains to be achieved in this area. **Only a handful of countries have to date included criteria based on humanitarian law in their national arms transfer laws or policies. In addition, the humanitarian law references included in various regional documents differ and not all regions have adopted such documents.** This is among the reasons we support the

development of an international agreement defining common global standards for arms transfers that would help fill these gaps.

A particular challenge that we have noted in this area is the fact that references to the recipient's respect for human rights and the risk of weapons being used for internal repression are far more common in regional and national arms transfer norms than are references to humanitarian law. In our experience, it is a common misperception that a separate humanitarian law criterion is unnecessary when a reference to human rights already exists, because the reference to human rights is believed to implicitly cover humanitarian law as well.

While it is true that some violations of humanitarian law would be covered by a requirement to consider the risk of human rights violations, many serious violations of humanitarian law would fall outside such a provision. This includes violations related to the conduct of hostilities, which are particularly relevant to the use of weapons.

**The ICRC would therefore like to stress that to fully reflect States' existing obligations under international law, compliance with humanitarian law must be accorded the same importance in arms transfer decision-making as compliance with human rights. In fact, when transferring military weapons, the ICRC considers the recipient's respect for humanitarian law among the most relevant considerations.**

**We would like to take this opportunity to encourage all States to include explicit references to humanitarian law in their arms transfer criteria to achieve the greatest degree of clarity in this regard.**

More specifically, all national and regional norms regulating arms transfers should take due account of States' existing obligations under international humanitarian law by including requirements to:

1. assess the recipient's likely respect for international humanitarian law
2. not transfer weapons if there is a clear risk that they would be used for serious violations of international humanitarian law

In the view of the ICRC, such requirements should also be among the fundamental criteria included in any future elaboration of common global standards for arms transfers.

By increasing their efforts to prevent weapons and ammunition from falling into the hands of those likely to use them to violate humanitarian law, States can significantly contribute to improving the protection of civilians during and after armed conflicts, facilitating post-conflict reconciliation and reconstruction, and enhancing the rule of law.

Thank you, Mr. Chairman.