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LIMITE

**COARM
CFSP/PESC**

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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Conventional Arms Exports
Subject:	Arms Exports and the Obligation to ensure respect for IHL - ICRC Presentation

Delegates will kindly find attached the presentation slides on Arms Exports from the International Committee of the Red Cross (ICRC), as held at the COARM meeting on 23 January 2024.



ARMS EXPORTS AND THE OBLIGATION TO ENSURE RESPECT FOR IHL

ICRC PRESENTATION TO THE EU COARM BY PAULINE WARNOTTE, SENIOR LEGAL ADVISER (BRUSSELS, 23 JANUARY 2024)



ICRC

CONTENT

1. Arms transfers from a humanitarian perspective

- ICRC's approach to arms transfers
- Obligation to respect and ensure respect for IHL
- The EU CP and the obligation to prevent international crimes

2. Strengthening the EU Common Position

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- Aligning the EU CP with the ATT
- Leveraging EPF safeguards and. post-shipment measures

3. Conclusion and outlook

- 34th International Red Cross Red Crescent Conference: Pledges



ARMS TRANSFERS FROM A HUMANITARIAN PERSPECTIVE

ICRC'S APPROACH TO ARMS TRANSFERS



“ [O]ur ICRC colleagues in the field still bear witness, on a daily basis, to the immense suffering caused by armed violence and conflict, fueled by insufficient controls over the trade in weapons and ammunition. ”

(Statement by the ICRC Vice-President Gilles Carbonnier at the 9th Conference of States Parties to the ATT, 21 August 2023)





ARMS TRANSFERS FROM A HUMANITARIAN PERSPECTIVE

OBLIGATION TO RESPECT AND ENSURE RESPECT FOR IHL

- **Assess** likelihood of arms transfer contributing to IHL violations
- **Use leverage and practical means** to induce respect for IHL by party to the armed conflict
- **Refrain from transferring arms** in case of a substantial or **clear risk** of encouraging, aiding or assisting in IHL violations



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EXPORT OF HEAVY EXPLOSIVE WEAPONS

- ICRC has been calling on states and parties to armed conflicts to **avoid using explosive weapons with a wide impact area in densely populated areas**, due to the **significant likelihood of indiscriminate effects**.
- ICRC recommends to **make the supply of explosive weapons with a wide impact area conditional on recipients limiting the use of such weapons in populated areas** in accordance with the good practices and take all appropriate measures to ensure that this is the case in practice.

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ARMS TRANSFERS FROM A HUMANITARIAN PERSPECTIVE

THE EU CP AND THE OBLIGATION TO PREVENT INTERNATIONAL CRIMES

- A state **must deny an arms transfer** if it has substantial grounds to believe, based on information in its possession *or that is reasonable available to it*, that the weapons would be used to commit war crimes, crimes against humanity or genocide.



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STRENGTHENING THE EU COMMON POSITION

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STRENGTHENING THE EU COMMON POSITION

PROMOTING RESPONSIBLE ACTION IN JOINT PRODUCTION

To avoid dilution of responsibility:

- Ensure **every contributing EU MS can influence the export of the final product**, incl. on IHL grounds
- Subject all international transfers – including **government-to-government transfers** – to IHL assessment
- Keep granted licenses **under review**
- **Disclose** end-user of the final product
- Promote **transparency** and **scrutiny**





STRENGTHENING THE EU COMMON POSITION

ALIGNING THE EU COMMON POSITION WITH THE ATT

- Add references to the risk of **'facilitating'** IHL/IHRL violations
- Mirror Art 7.4, ATT regarding the risk of **"serious acts of gender-based violence or serious acts of violence against women and children"**
- Mirror the language of Art 7.1 of the ATT in respect of **IHRL**



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STRENGTHENING THE EU COMMON POSITION

EPF SAFEGUARDS AND PSM

- Leverage experience gained with **EPF safeguard**
- Leverage experience gained with **post-shipment measures**, also to **prevent and address misuse** of arms/IHL violations



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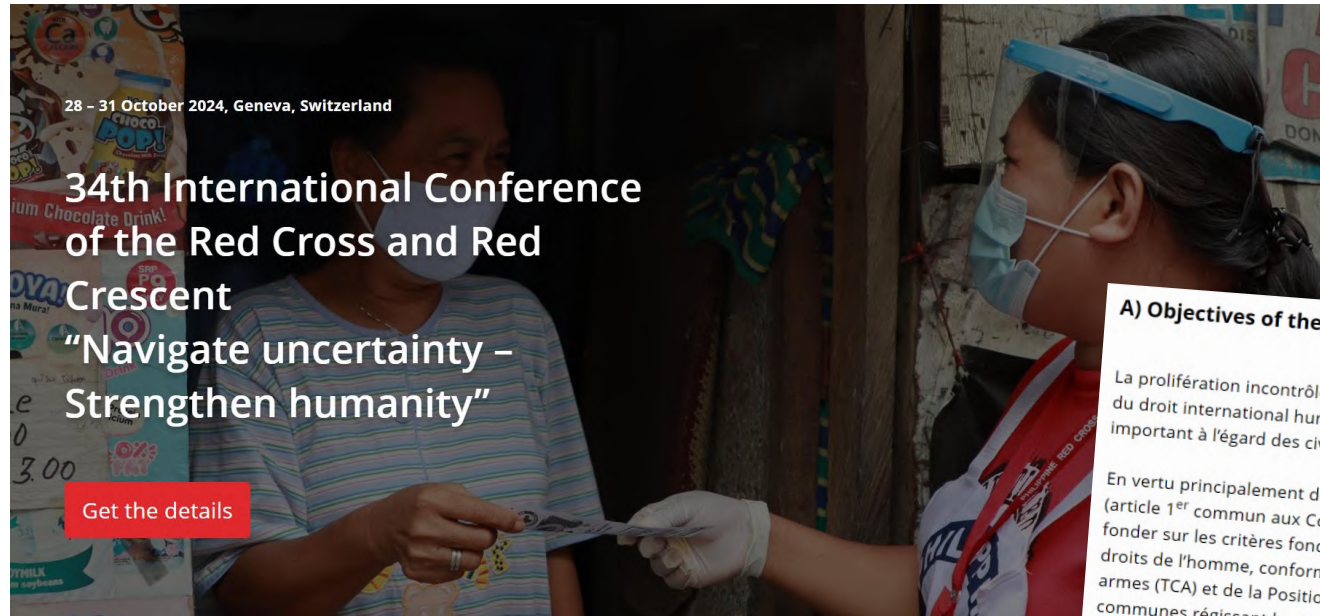
CONCLUSION AND OUTLOOK

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PROMOTING RESPONSIBLE ACTION IN THE ARMS TRADE



<https://rcrcconference.org/>

A) Objectives of the pledge:

La prolifération incontrôlée des armes et des munitions a pour effet de faciliter les violations du droit international humanitaire et des droits de l'homme. Elle suscite un coût humain important à l'égard des civils et de l'action humanitaire dans les situations de conflit armé.

En vertu principalement de l'obligation de faire respecter le droit international humanitaire (article 1^{er} commun aux Conventions de Genève de 1949), toute décision de transfert doit se fonder sur les critères fondamentaux de respect du droit international humanitaire et des droits de l'homme, conformément aux dispositions du traité de 2013 sur le commerce des armes (TCA) et de la Position commune 2008/944/PESC de l'UE de 2008 définissant des règles communes régissant le contrôle des exportations de technologie et d'équipements militaires.

Conscientes qu'une application rigoureuse, cohérente, objective et non discriminatoire des critères fondés sur le droit international humanitaire et les droits de l'homme parviendra à empêcher que des armes tombent aux mains de personnes qui risquent de s'en servir pour commettre des actes en violation de ces règles, les Autorités belges et la Croix-Rouge de Belgique réaffirment l'importance d'un transfert responsable et contrôlé des armes.

A cette fin, **les Autorités belges s'engagent à :**

Pledge data

Pledge by Royaume de Belgique et la Croix Rouge de Belgique

Date : April 22, 2020

Number: SP330220

Country - Type of Entity:
Belgium - States
Belgium - National Society

Theme: Thème 1 - DIH en tant qu'instrument de protection des personnes

Type of pledge: Specific

Keywords: IHL - national implementation, Weapons, IHL compliance

Conference edition: 33rd International Conference



THANK YOU FOR YOUR ATTENTION

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