

THE HUMANITARIAN LIMITS TO WEAPONS TRANSFER

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Abstract

The uncontrolled proliferation of arms and indiscriminate means and methods of warfare fuels conflicts, human rights abuses, and humanitarian crisis, undermining international peace and security. Despite existing international and regional instruments, irresponsible arms transfer continue to cause unnecessary sufferings, displacement and instability highlighting the need for stricter controls and accountability to ensure compliance with international humanitarian law. This paper examines the humanitarian limits on weapon transfer under the International Humanitarian Law focusing on the Arms Trade Treaty, Anti-personnel mine ban, and Treaty on the Prohibition of nuclear weapons among others, discussing their provisions on risk assessment, diversion prevention, and victim assistance. It is aimed to contribute to a more nuanced understanding of the complex challenges and opportunities in regulating weapons development, use, deployment and transfer. Case studies from West Africa illustrate the consequences of irresponsible arms transfers, emphasizing the need for strict border control and accountability. As such, it emphasizes the role of legal review of new means and methods especially as new tactics continue to emerge so as to prevent the development and deployment of weapons that violate International Humanitarian Law principles, such as autonomous weapons and other emerging technologies. In conclusion, the paper highlights the role of international cooperation and responsible arms trade practices in promoting human security and preventing humanitarian suffering.

Keywords: International Humanitarian Law; Arms Trade Treaty; Arms Transfer Regulation; Emerging Weapons Technologies and Human Security.

1. Introduction

International humanitarian law and related treaties set clear humanitarian limits on weapons transfers, aiming to prevent arms from fueling violations such as war crimes, genocide, and crimes against humanity. Weapons are produced and traded for defense and security, yet their misuse causes widespread civilian suffering, displacement, and instability. There are therefore legal and illegal arms trade and arms transfer but the Arms Trade Treaty was the first binding instrument, restricting the transfer of conventional weapons, with a view of reducing the violations of international law and commission of crimes¹.

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¹ Eva Nave, "The Importance of the Arms Trade Treaty for the Implementation of the Sustainable Development Goals", *Journal of Conflict & Security Law* Oxford University Press 2019, (<http://creativecommons.org/licenses/by/4.0/>), published on 3 June 2019, Pp 297 – 300.

Uncontrolled or irresponsible weapons transfer undermines international peace, violates humanitarian norms, and threatens human security worldwide. The Arms Trade Treaty was adopted by the United Nations General Assembly on the April 2, 2013 and came into effect on December 24th, 2014, to regulate international trade in conventional weapons, preventing illicit arms trade and promoting peace and security².

Before the Arms Trade Treaty, early efforts were not as successful, including the United Nations Register of Conventional Arms of 1991, the International Code of Conduct on Arms Trade of 1997, the European Union Code of Conduct on Arms Exports of 1998 and the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small and Light Weapons in all its Aspects, 2001. There are also United Nations General Assembly Resolutions, setting international standard on import, export and transfer of conventional weapons. The Arms Trade Treaty was ratified by 117 party states and 25 countries have not completed the formal ratification process³.

Instruments that are aimed at controlling, limiting or preventing arms transfer and misuse are so many but the most recent of them are the Arms Trade Treaty, ECOWAS Convention on Small Arms and Light Weapons, the European Union Common Position on Arms Export, Nairobi Protocol and the Nigerian Firearms Act. Other instruments are the Geneva Conventions, Hague Conventions, and specific treaties on landmines, blinding laser weapons, prohibit transfer of weapons likely to be used in violation of International Humanitarian Law or to cause unnecessary suffering or indiscriminate harm⁴.

The Arms Trade Treaty addressed many issues including the issue illegal transfers of conventional arms and the serious negative impacts that such transfers may have on security, armed conflict and human rights. The Treaty came with a regulatory framework for its member countries in the evaluation and regulation of transferring arms, ensuring that these arms transfers do not facilitate human rights violations or violence. State parties to the Treaty are compelled to ensure thorough risk assessments before agreeing to export arms, thereby ensuring that these transfers do not cause unnecessary suffering as well as not violate International Humanitarian Law and Human Rights Law. This paper is therefore to examine how International Humanitarian Law and for Human Security established the need for humanitarian limits to weapons transfer⁵.

2. Conceptual Framework

It is an obligation on states to prevent the transfer of weapons that could be used to commit International Humanitarian Law violations. These limits apply to all weapon types and are a crucial component of modern arms control and the quest for peace and security.

² See “Rapid Spread of Small Arms, Light Weapons Still Threatening World Peace, Exacerbating Plight of Civilians in Conflict Zones, Disarmament Chief Tells Security Council”, SC/14656, 6 October 2021, 8874th Meeting.

³ Zeynep Kologlu, “The Arms Trade Treaty”, <https://doi.org/10.24921/2022.94115958.04>, 2022, Pp 116 - 122

⁴ Alexandra Boivin, “Complicity and beyond: International law and the transfer of small arms and light weapons”, *International Review of the Red Cross*, Volume 87 Number 859 September 2005, p467.

⁵ Hardy Giezendanner, Anna Mensah Sackey, Ishtiaq Khan Rob Hunter-Perkins, Rachel Stoh, “The Arms Trade Treaty Regulating Brokering to Reduce the Risk of Diversion”, Arms Trade Treaty Issue Brief No. 5, UNIDIR, Conflict Armament Research, and Stimson Center. <https://doi.org/10.37559/CAAP/25/ASC/04>. 2025.

2.1 Weapons Transfer

Arms transfer is the export, sale, or supply of arms between states or non-state actors, whether legal or illicit. The concept of "weapons transfer" refers to the international and domestic movement of conventional weapons, which can be legal, like a state-to-state sale, or illicit, like illegal trafficking. The law is therefore responsible for the control of arms flows, the legal and ethical responsibilities of states in authorizing transfers, the prevention of diversion to unauthorized hands, and the potential for these transfers to impact human rights and security. The process of arms transfer also involve defining what constitutes a "weapon" for regulatory purposes.⁶

The concept of "weapons" encompasses tools and systems used for injury, defeat, or destruction, which range from simple implements like clubs and knives to sophisticated military systems. Weapons can be categorized by their function, such as small arms, like pistols and rifles or light weapons, like grenade launchers and mortars. It also include improvised and craft-produced weapons, which are weapons made by individuals or groups, which can range from crude, single-shot guns to more sophisticated copies of conventional firearms. The development of modern weapons involves complex processes, including collaboration with industry to build advanced systems with specific capabilities. Military forces are constantly modernizing their arsenals to maintain a technological advantage⁷.

Autonomous Weapons on the other hand, are independent weapons used in war, by minimizing or eliminating human involvement in carrying out its duties. The independence of the system in a weapon is not always the control autonomously based on artificial intelligence, but there are also those that still require humans to be able to control a weapons machine, just like weapons system equipped with an autonomous system but at a low level where it can only follow programmed instructions. There are weapons that can automatically determine military objects that have the potential to be dangerous and send a signal to the operator, namely a human, so that the human still determines whether an attack can be carried out on the targeted object automatically or not.

Autonomous Weapons are "Any weapon system with autonomy in its critical functions, a weapon system that can select (search for, detect, identify, track or select) and attack (use force against, neutralize, damage or destroy) targets without human intervention"⁸. The trade in small arms, light weapons, and their parts, accessories, and ammunition including Autonomous weapons, involves every country in the world and it includes transfers that are authorized by states and illicit flows of such arms violates National and International law.

2.2 International Humanitarian Law

International Humanitarian Law are the international rules established by treaty and custom, which are specifically intended to solve humanitarian problems that arise directly from

⁶ Annyssa Bellal, "Arms Transfers and International Human Rights Law", Published online by Cambridge University Press: 05 February 2014, Pp. 448 – 471.

⁷ Annyssa Bellal, Stuart Casey-Maslen and Gilles Giacca, "Implications of International Law for a Future Arms Trade Treat", Geneva Academy of International Humanitarian Law and Human Rights, p3.

⁸ Bobi Ardiansyah, "Legality of the Use of Autonomous Weapons Systems in International Humanitarian Law", *Journal of Law, Politic and Humanity*, Vol. 5, No. 4, 2025, p2.

international or non-international armed conflicts, for humanitarian reasons, these rules protect persons and property that are, or may be, affected by conflict, by limiting conflicting parties' rights to choose their methods and means of warfare.⁹

International Humanitarian Law is the body of international law that regulates conduct during armed conflict protecting civilians and limiting suffering. It is a branch of International law applicable during international or non-international armed conflict with the objective of protecting persons not or no longer participating in hostilities¹⁰ and restricts the means and methods of warfare. The Arms Trade Treaty specifically regulates the cross border transfer of conventional arms, and links responsibility to the exporting state's failure to conduct an appropriate risk assessment. In order to uphold and strengthen the rules of international humanitarian law governing weapons, concerted efforts was made to ensure that existing treaties are adopted, ratified and faithfully implemented, and that the humanitarian and international humanitarian law implications of new technological developments are better understood and addressed and that the known and potential humanitarian impacts of weapons are taken into account by states and the world at large.

States party to the Geneva Conventions did expressed alarm at the uncontrolled proliferation of weapons during the 26th International Conference of the Red Cross and Red Crescent. 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 International Humanitarian Law in armed conflicts and the deterioration of the situation of civilians". The ICRC published the results of its study four years later, finding that the widespread and uncontrolled availability of arms and ammunition facilitates International Humanitarian Law 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.

Based on the ICRC's recommendations, the 27th International Conference 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". 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 level, so that weapons do not end up in the hands of those who may be expected to use them in violation of International Humanitarian Law¹¹.

⁹ Antoine A. Bouvier, *International Humanitarian Law and the Law of Armed Conflict*, Peace Operations Training Institute, 2020, p12.

¹⁰ A Publication of the ICRC: *The Humanitarian Limits To Weapons*.

¹¹ A Publication of the ICRC, "Reducing Human Suffering through Responsible Arms Transfers: The Road to the Arms Trade Treaty", in *Understanding the Arms Trade Treaty from a Humanitarian Perspective*, 2016, Pp 8 – 9.

The Arms Trade Treaty, compelled state parties to ensure thorough risk assessments before agreeing to export arms, to ensure that these transfers do not cause unnecessary suffering as well as not violate International Humanitarian Law and Human Rights Law¹².

2.3 Human Security;

Human security is a people centered approach that prioritizes protection from threats to life, dignity, and wellbeing, including violence, poverty, and displacement. Human security is that very concept which has changed much over the years and also evolved from traditional notions of security, which primarily emphasize concerns over state-centric and military aspects, to a more holistic understanding which puts emphasis on safety and well-being.

Human security is another concept which reminds individuals of the protection of people and communities rather than the states. Further, it encompasses economic, food, health, environmental, personal, community, and political security threats to human well-being. According to the United Nations Development Programme, human security is "safety from chronic threats such as hunger, disease, and repression" and also "protection from sudden and harmful disruptions in the patterns of daily life"¹³.

The human security framework calls for turning over or shifting away from traditional security that the main focus would be state sovereignty and military threats, to an overall approach that places an emphasis on the dignity and rights of the individuals. This approach recognizes that security is not about being free of war, but also the existence of conditions allowing persons to lead fulfilling lives¹⁴.

State based security is the way classic security doctrines like the military might, imagine the state as the primary referent for security. Often, though, state focused security policies do not have much light on the root causes of insecurity for weak parties; sometimes not even for individuals. Think about civil wars, insurgencies, and repressive governments that often threaten to inspire fear in people despite the overall state's security. This understanding gave birth to the human security paradigm, where the welfare of people is valued over that of a state.¹⁵

Armed conflicts lead to acute humanitarian crises with massive displacement of population, food insecurity, and rampant violations of the international humanitarian law. The Arms Trade Treaty is an important framework that protects human security through the regulation of 'international trade in conventional arms', and by bringing these negative effects of such trade on human rights and humanitarian law. It has set strict conditions for transfers of arms to mandate states to assess potential risks that may be posed during the use of such arms in serious violations of humanitarian law or human rights abuses¹⁶.

2.4 Humanitarian Limits

¹² Dimpal T. Raval, Chauhan Sani, "Analyzing the Impact of the Arms Trade Treaty on Human Security: Regional Insights", Multidisciplinary & Multilingual Journal, Volume 3 Issue 2 July-December 2024, p54.

¹³ Ibid, Pp55 - 56.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

Humanitarian limits on weapon transfers¹⁷ are governed by international humanitarian law, which prohibits transfers of weapon to states that commit grave breaches of human rights or international law, and restricts the types of weapons that can be used to those that do not cause superfluous injury or unnecessary suffering. These limits balance military necessity with humanitarian principles, and aim to protect civilians, ensure compliance with laws like the Geneva Conventions, and prevent the transfer of weapons that are indiscriminate or inhumane.

The Arms Trades Treaty maintained the humanitarian limits and standards as criteria for the authorization and monitoring of international arms transfers, it established commonly accepted international criteria to be followed by national control systems that combine international security and human safety¹⁸.

The treaty answers the urgent need to stop illegal arms trade and diversion, which is connected with armed conflicts, human rights violations, and humanitarian emergencies, mostly against civilian communities. The preamble of the treaty points toward the interconnectedness of peace, security, development, and human rights, and thus shows the fact that uncontrolled arms trade augments poverty and inequality to vulnerable groups, such as women and children, disproportionately affected. It also seeks to promote greater responsibility among export arms nations in the assessment of risks associated with potential arms transfers, especially regarding their possible use against persons in human rights abuses or to fuel conflict¹⁹. The treaty is not the only law in this area but to have distinguished itself from other laws by setting the limits.

Some of the key principles of humanitarian limits on weapon transfers may include; Prohibition on transfers to states committing violations or sponsor crimes against humanity, human rights abuses, or grave breaches of the Geneva Conventions or other rules of International Humanitarian Law. Regulation of weapon types by prohibiting transfer of certain weapons, such as those that are incapable of distinguishing between combatants and civilians, or those that cause superfluous injury or unnecessary suffering; and Balancing between military necessity and humanity. International Humanitarian Law represents a balance between military necessity and humanity, with every rule being a compromise between these two forces.

3. The Humanitarian Limits Under International Humanitarian Law

International Humanitarian Law set to limit weapon transfers by prohibiting transfers to states that commit grave human rights violations or breaches of international law, and by restricting weapons that are indiscriminate or cause superfluous injury. States must also ensure new weapons are compatible with the International Humanitarian Law principles before transferring them, by assessing their compatibility with the principles of distinction and proportionality.

3.1 Principle of Humanity

The Law prohibits the transfer of weapons that cause unnecessary suffering or superfluous injury. Since 1945, the International Red Cross and Red Crescent Movement (Movement) has

¹⁷ Which also include but not limited to legal and moral boundaries, preventing weapons from being transferred or used in ways that harm civilians or violate humanitarian principles.

¹⁸ Bárbara Thaís Pinheiro Silva, Priscila Carolina Pellens and Isabela de Castro Andrade da Silva, “The arms trade treaty and illicit trade under international humanitarian law”, 10.56238/homeinternationalanais-056, p2.

¹⁹ Dimpal T. Raval, Chauhan Sani, n 12, p58.

repeatedly voiced its concern about the devastating humanitarian consequences of nuclear weapons, and has called on states to prohibit these weapons. The ICRC first called for the abolition of nuclear weapons in the aftermath of the atomic bombing of Hiroshima, where ICRC staff saw the catastrophic consequences of the use of nuclear weapons while working alongside the Japanese Red Cross to care for tens of thousands of wounded and dying civilians. The experience had a profound impact on the ICRC and on the Movement as a whole.²⁰

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is still widely regarded as the cornerstone of global nuclear non-proliferation and disarmament efforts, but progress in implementing its disarmament provisions has long been stalled, disarmament and risk reduction measures agreed at review conferences have not been implemented and states parties have been unable to agree on further measures. In these troubling circumstances, International Humanitarian Law assumes an important role in maintaining and reinforcing the taboo against the use of nuclear weapons and providing the basis for new legal measures to advance their elimination, such as the Treaty on the Prohibition of Nuclear Weapons (TPNW).

In July 2017, 122 states adopted the TPNW, which entered into force on 22nd January 2021, the preamble to the treaty makes it clear that “any use of nuclear weapons would be contrary to the rules of international law applicable in armed conflict, in particular the principles and rules of international humanitarian law”²¹. And if the use is prohibited, then the transfer of is equally prohibited, at the 31st International Conference in 2011, states committed themselves to making respect for International Humanitarian Law, and one of the most important decisions is about arms transfers, so that arms and ammunition do not end up in the hands of those who may be expected to use them in violation of International Humanitarian Law²².

3.2 Principle of Distinction

Arms should not be transferred to parties likely to target civilians or civilian objects. The Arms Trade Treaty governs international trade in conventional weapons, ammunition, weapon parts and components, with a view to reducing human suffering (including the civilians and civilian objects) and contributing to international and regional peace, security and stability. Articles 6 and 7 of the Treaty lay down strict criteria for the transfer of weapons specifically with a view to avoiding serious violations of International Humanitarian Law.

These rules derive in part from states’ duty to respect and ensure respect for International Humanitarian Law, as it was set out in common Article 1 to the Geneva Conventions and restated in the preamble to the Treaty. Article 6(3) provides that a state party shall not authorize any transfer of arms covered under the Arms Trade Treaty, if it has knowledge that the arms could 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 set out in Article 7(1)(b), it must not authorize the export if there is an ‘overriding’ risk that the exported arms could be used to commit or facilitate serious violations of International Humanitarian Law²³.

²⁰ International Humanitarian Law and the Challenges of Contemporary Armed Conflicts Building a Culture of Compliance for International Humanitarian Law to Protect Humanity in Today's and Future Conflicts, (Report of September 2024), 28 – 31 October, 2024, Geneva, Pp1 – 10.

²¹ Ibid.

²² Ibid p70.

²³ See, Article 7 (3) of the Arms Trade Treaty.

On the basis of the conclusions of its study entitled *Arms Availability and the Situation of Civilians in Armed Conflict* (1999), the ICRC has proposed that all national and international standards for arms transfers should include a requirement to assess the recipient's likely respect for international humanitarian law and to not authorize transfers if there is a clear risk that the arms will be used to commit serious violations of this law²⁴.

The principle of distinction in International Humanitarian Law requires parties to a conflict to at all times distinguish between civilians and combatants, and between civilian objects and military objectives, directing attacks only against military targets. This principle is a cornerstone of International Humanitarian Law, aimed at protecting the civilian population from the effects of hostilities. Civilians lose protection only when they directly participate in hostilities²⁵.

3.3 Principle of Proportionality

Weapons transfers must be denied if their use could result in excessive civilian harm relative to military advantage. The principle of proportionality in International Humanitarian Law, prohibits attacks that are expected to cause civilian harm that is excessive in relation to the anticipated military advantage. It requires a balance between military necessity and humanitarian protection, mandating that any incidental civilian loss of life, injury, or damage to civilian objects must not be excessive compared to the concrete and direct military advantage. This principle is a cornerstone of *jus in bello*, enshrined in treaties like the Geneva Conventions and Customary International Law²⁶.

The Arms Trade Treaty, set out the international standards and contributes to improving the rules of protection for persons not participating in military combat, during operations, which are widespread and restrict the means and methods of warfare used against areas under armed military conflicts. The International Humanitarian Law principles, including the principle of proportionality is considered one of the most important principles of international humanitarian law, which seeks to keep civilians away from the effects of wars and armed conflicts, to prevent violations and alleviate suffering.

Accordingly, the principle of proportionality is considered one of the most prominent principles of international humanitarian law. The principle of proportionality means a means of limiting the damage resulting from armed military operations, by using weapons that are proportionate to the military operation to achieve the desired goal. The use of military necessity to achieve victory over the other party must be within a legal framework, and states are not free to use whatever

²⁴ Arms Transfer Decisions Applying International Humanitarian Law Criteria, (States should make respect for international humanitarian law one of the fundamental criteria on which arms transfer decisions are assessed. They are encouraged to incorporate such criteria into national laws or policies and into regional and global norms on arms transfers), 28th International Conference of the Red Cross and Red Crescent, Agenda for Humanitarian Action, Final Goal 2.3 (adopted by consensus on 6 December 2003), International Committee of the Red Cross Geneva, June 2007, p5.

²⁵ Gabriel Swiney, *Saving Lives: The Principle of Distinction and the Realities of Modern War*, international Lawyer, Vol. 39. No.3, 2005, p733.

²⁶ Abdulhadi Qasim Mahdi Al-Baidhani, *The Scope of The Principle of Proportionality in International Humanitarian Law*, *European Scholar Journal (ESJ)* Available Online at: <https://www.scholarzest.com> Vol. 5 No. 5, May 2024, p24.

weapons they wish, or methods that may lead to the destruction of the opponent's infrastructure as an enemy²⁷.

Rather, states must choose the means that are appropriate for this goal. So that it does not cause excessive damage that is not necessary. At the international legal level, the Hague Regulations Concerning the Laws and Customs of Land Warfare of 1907, approved this principle, which stipulated: "The belligerents do not have an absolute right to choose the means of causing harm to the enemy"²⁸.

4. Prohibited Weapons Under International Humanitarian Law

International Humanitarian Law prohibits weapons that are indiscriminate, cause unnecessary suffering, or are expected to cause widespread, long term environmental damage. Like **chemical and biological weapons, exploding or expanding bullets, anti-personnel mines, blinding laser weapons, and incendiary weapons when used against civilians**. Weapons are restricted to prevent harm to civilians and ensure attacks are only directed at military objectives.

The general rule is that prohibited weapons are prohibited from being transferred²⁹. This include **weapons that are indiscriminate**, weapons that cannot be directed at a specific military objective, weapons that are by nature unable to discriminate between civilians and combatants; **Weapons that cause unnecessary suffering, like bullets that expand or flatten easily in the human body are prohibited or bullets that explode inside the body, and blinding laser weapons. Weapons with a severe environmental impact and Chemical and biological weapons are prohibited³⁰. Article 45 (2 and 3) and Article 51 (4 and 5) of the Additional Protocol 1 clearly established the principle of distinction between the civilian objects and military objectives, and the prohibition of methods and means of warfare that are intended, or may be expected to cause widespread long term and severe damage to the natural environment.³¹**

In general, International Humanitarian Law prohibits any weapon "of a nature to cause superfluous injury or unnecessary suffering" and any that may have indiscriminate or excessively injurious effects. This is an ancient principle, linked to the axiom that "the right of the parties to the conflict to choose methods or means of warfare is not unlimited"³².

International Humanitarian Law may therefore prohibit the use, production, stockpiling, or selling of certain kinds of weapons. This is now the case for biological and chemical weapons, for instance, and to some extent for landmines.

²⁷ Ibid.

²⁸ Specifically in the text of Article 22. As stated in the provisions of the Additional Protocols of 1977 attached to the four Geneva Conventions, to enhance respect and ensure the principle of proportionality in military conflicts, to avoid harm to civilians.

²⁹ See Articles 6 (1), (2) and (3) of the Arms Trade Treaty. Thus any transfer of any weapon that falls within the prohibitions under international law and treaties, is strictly prohibited under the Arms Trade Treaty.

³⁰ Under Article 36 of Additional Protocol I, states have an obligation to review the legality of all new weapons, means, or methods of warfare before they are used in armed conflict. See also the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be deemed to be Excessively Injurious or to have Indiscriminate Effects.

³¹ ICRC, n 10.

³² AP I, Article. 35

For instance, the 1899 and 1907 Hague Regulations prohibits poison or poisoned arms and weapons, the 1925 Geneva Protocol prohibits chemical & biological weapons, other instruments prohibiting chemical and biological weapons includes: Biological and Toxin Weapons Convention (BTWC) and the Chemical Weapons Convention (CWC).³³

Since 1977³⁴, International Humanitarian Law has also codified that it is forbidden to employ methods or means of warfare that are intended, or may be expected, to cause widespread, long-term, and severe damage to the natural environment³⁵.

For the most part, the rules governing the use of such weapons are set forth in specific international conventions that address these issues specifically and therefore only apply to the States Parties to these conventions. The main exceptions are the Geneva Conventions and Additional Protocols, which are widely ratified by States and amount to customary international law, and which go a long way toward regulating means and methods of warfare. States therefore have a duty to ensure that arms transfers do not lead to violations of humanitarian norms.

5. International and Regional Legal Instruments on Weapons Transfer

International and regional instruments on arms transfers regulate the trade of weapons through legally binding treaties, non-binding instruments, and reporting mechanisms. Some of this instruments is the Arms Trade Treaty, which sets international standards for arms transfers, and the non-binding initiatives includes the UN Programme of Action (UNPoA) and the International Tracing Instrument (ITI). For Regional, there is the ECOWAS Convention on SALW and for the European Union, there is the Common Position on arms exports, which specifically address regional challenges and apply regional criteria³⁶.

5.1 The Arms Trade Treaty;

The Arms Trade Treaty is a legally binding global treaty that regulates the international transfer of conventional arms and establishes common standards for national control systems.

The Arms Trade Treaty is a 2014 international treaty that regulates the international trade of conventional arms to prevent and eradicate illicit trade and diversion. It requires States Parties to establish national control systems for exports, imports, and transit of eight categories of conventional arms, such as battle tanks and combat aircraft. The main function of the Treaty is that exporting states must assess the potential for arms transfers to be used for serious human rights violations, gender-based violence, or to undermine peace and security, and to refuse transfers if a risk cannot be mitigated or if it will contradict the International Humanitarian Law principles. With 116 state parties and 26 signatories, the Arms Trade Treaty makes arms transfer decisions subject to humanitarian concerns by prohibiting transfers where there is a certain level of risks that the transferred arms would or could be used to commit or facilitate serious violations of international humanitarian law or international human rights law.³⁷

³³ ICRC, n 10..

³⁴ When Additional Protocol I to the 1949 Geneva Conventions was adopted.

³⁵ Ibid.

³⁶ See also the African Union Common Position on an Arms Trade Treaty.

³⁷ ICRC, n 10.

5.2 Arms Trade Treaty and Weapons Transfer to Ukraine

The Russian military attack in, and against Ukraine has given rise to several critical reflections on the international law applicable to the use of force and international humanitarian law. The armed conflict there has become a laboratory to distinguish and analyze the applicable rules related both to *jus ad bellum* and *jus in bello*. The interest here is to analyze the legality of the actions of third states, which in one way or another, have offered and provided military assistance to Ukraine through the delivery of conventional arms in order to make Russian troops withdraw from the occupied territory.

In this context, there is a growing flow of arms trade, the question that was considered, is whether the transfer of conventional armaments, small, light, or heavy weaponry, constitutes a lawful act under contemporary international law, or whether we are facing situations that are contrary to the positive rules in force.

At the same time, it contributes to a broader thinking about the legal and extra-legal limits that can be imposed on arms transfers when they are likely to affect international peace and security or jeopardize respect for human rights.

The situation in Ukraine is an interesting case study. After the Russian invasion of Crimea in 2014, the United States has provided increased assistance to the Ukrainian government; initially, the amount was estimated at more than three billion dollars, but the Biden administration decided soon afterwards to approve an expanded budget of \$1.7 billion in addition to what was originally foreseen. At the beginning, this aid was earmarked for the shipment of non-lethal material and defense training, but as the conflict escalated, it was channeled towards the specific shipment of weapons, generally defensive but also of an offensive nature³⁸.

Most countries within the European Union (EU) also decided to transfer weapons to the Ukrainian territory, including heavy weapons³⁹ or light weapons⁴⁰, only in some cases this so called assistance has been limited to equipment whose use does not produce lethal consequences. For the most part, the weapons delivered are of defensive potential⁴¹, although in some cases, certain countries provided military equipment clearly intended for offensive use. Prior to the Russian attack on February 24, 2022, Germany's refusal to send the Ukrainian military offensive weapons, while maintaining a restrictive position, had generated some debate.

As far as EU actions are concerned, the Council approved an unprecedented resolution on February 28, 2022, through which military assistance to the Ukrainian Armed Forces would be financed for a total of €450 million, a figure which was doubled by Decision 2022/471/CFSP on March 23 of the same year. On May 16, the EU gave the green light to funding of €1.5 billion for the shipment of war material designed to produce lethal effects to Ukraine. This is the first time that the EU has jointly and financially supported the supply of armaments to a third country. All these measures were taken in the context of the European Peace Facility (EPF), created in 2021 for the financing, by the member states, of various EU actions within the framework of common

³⁸ Such as Tanks, Combat Aircraft, and, more recently, Cluster Munitions.

³⁹ Such as T-72 Tanks.

⁴⁰ Such as Machine Guns.

⁴¹ Such as Anti-Tank or Anti-Aircraft weapons.

foreign and security policy aimed at maintaining “peace, preventing conflicts and strengthening international security.”

The weapons meant for Ukraine are for military use, such as those described, are not in themselves prohibited and can be used to confront situations of aggression or oppression. But the concern here is the receiving state is going through specific problem that deserves particular attention. And looking at the circumstances of the transfer, and when these measures were approved, sufficient conditions of control, supervision, or monitoring were not established before the transfer⁴².

This is the case of the Arms Trade Treaty, an agreement whereby the negotiating states agreed on the highest possible international standards to harmonize trade transactions involving conventional arms, and thus, to prevent and eradicate illicit trade.

The text of the Arms Trade Treaty, Article 6 makes explicit a prohibition imposed on the state that intends to export armaments in any of the categories provided for: it states that no transfer may be authorized if it would violate (1) “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) or of other relevant international obligations under existing agreements on transfer and illicit trafficking, (3) or even if there is: knowledge at the time of the 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 Party⁴³.

In terms of International Humanitarian Law, it could be said that the mere supply of arms in times of armed conflict would not amount to a direct participation in hostilities. Although there may be some hesitation as to whether the principle of neutrality would be affected, because this act would clearly support of one of the parties to the conflict, it seems difficult to identify the supply of arms as a concrete military intervention; unless military items are sent with the precise indication or order of their use in the commission of a violation of International Humanitarian Law, the mere delivery of arms would not constitute a direct contribution to the war effort because, in general, the causal link between the state exporting arms and the state utilizing them in a potentially illicit manner is not direct. Delivering weapons does not mean exercising an efficient control over what is done with such arms on the ground. In sum, just as the law of neutrality cannot prevent third states from intervening in favor of a state unjustly attacked, the mere supply of arms would not lead to consider, per se, that such third states change their legal status by becoming parties to the conflict⁴⁴.

However, before such agreement for transfer is concluded, certain risk indicators must be strictly considered, the recipient state engaged in an armed conflict must have committed serious

⁴²James Ellisona, et al, “The war in Ukraine”, 2023, VOL. 23, NO. 1, 121–206
<https://doi.org/10.1080/14682745.2023.2162329>, UK. P123.

⁴³ Article 6 and 7 of the Arms Trade Treaty.

⁴⁴ Emiliano J. Buis, “The Legality of Conventional Arms Transfers During Armed Conflicts: Assessing State Responsibility for Facilitating Military Actions of Other States”, Texas Tech Law Review, Vol. 56:61, Pp 62 - 80

violations of the International Humanitarian Law and human rights law or in situations where the recipient state has not made formal commitment to apply the rule of the International Humanitarian Law and taken appropriate measures for their implementation. It is necessary also to determine whether the arms or military equipment requested are commensurate with the operational requirements and capacities of the end-user and whether the recipient maintains strict and effective control over its arms and military equipment and their further transfer.⁴⁵

5.3 Anti-personnel Mine Ban Convention

The 1999 Ottawa Treaty is a landmark international agreement that aims to eliminate the use and production of anti-personnel mines which are designed to be placed on or near the ground and to be detonated by the presence, proximity or contact of a person. States adhering to this treaty must never under any circumstances use, develop, produce, acquire, stockpile, retain or transfer anti-personnel mines or help anyone else to do so directly or indirectly.⁴⁶

Nigeria as a state party enacted the Anti-Personnel Mines (Prohibition) Act, 2017 to implement the treaty domestically. Apart from the complete ban and prohibition from using, developing, acquiring and stockpiling anti-personnel mines, state parties must destroy existing stockpiles of anti-personnel mines within four years of joining the treaty and to remove, clear or destroy mines from mined areas under their jurisdiction or control within 10 years of joining the treaty.

The convention's preamble records the wish of the state parties 'to do their utmost in providing assistance for the care and rehabilitation, including the social and economic reintegration of mine victims.' Providing assistance therefore translates into; data collection and information management to understand the extent of the challenge faced, emergency and continuing medical care, physical rehabilitation, including physiotherapy, prosthetics and assistive devices, economic reintegration.⁴⁷

5.4 Treaty on the Prohibition of Nuclear Weapons (TPNW)

Based on International Humanitarian Law principles and rules, aimed at preventing & mitigating the catastrophic humanitarian consequences of nuclear weapons, the TPNW includes a comprehensive set of prohibitions on participating in any nuclear weapon activities.⁴⁸ These include undertakings not to develop, test, produce, acquire, possess, stockpile, use or threaten to use nuclear weapons. The treaty also prohibits the deployment of nuclear weapons on national territory and the provision of assistance to any state in the conduct of prohibited activities.

It is expected for state parties to declare nuclear status and to submit such declarations not later than 30 days after the treaty entered into force. Such declaration shall state whether the state party owned, possessed or controlled nuclear weapons or nuclear explosive devices and eliminated its nuclear-weapon programme, including the elimination or irreversible conversion of all nuclear-weapons related facilities.⁴⁹

⁴⁵ ICRC, n 10.

⁴⁶ Article 1(b) Anti- Personnel Mine Ban Convention, 2056 UNTS 211.

⁴⁷ Ibid, Article 6.

⁴⁸ Treaty on the Prohibition of Nuclear Weapons, 2017.

⁴⁹ Ibid, Article 2.

Like the Anti-personnel mine convention, the TP provides for victim assistance and environmental remediation,⁵⁰ each state party shall with respect to individuals under its jurisdiction who are affected by the use or testing of nuclear weapons, in accordance with applicable International Humanitarian Law and human rights law, adequately provide age and gender sensitive assistance, without discrimination, including medical care, rehabilitation and psychological support as well as provide for their social and economic inclusion.

6. ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials

The ECOWAS Convention is a regional agreement focusing on controlling SALW, their ammunition, and related materials within West Africa. West African states have witnessed broad range of conflicts in which illicit arms fuel, illicit arms and weapons largely fuelled the uncontained and overlapping illicit arms violence in Sierra-Leon, Senegal, Guinea Bissau, Mali, Liberia and Nigeria at large, West African Sub Region are still struggling for survival from the crises in which illicit small arms and light weapons play a central destabilizing role⁵¹.

Reports have revealed that millions of people have being killed, immeasurable number of properties destroyed, grossly violation of human rights in facilitating illicit arms trafficking criminality, subverting, the rule of law in creating insecurity, instability and general state of fear in the sub region due to illicit arms and weapons circulation in West Africa sub region. The encounters caused by illicit trafficking of arms and weapons in West Africa sub region cannot be quantified accurately, as many of the hazards are difficult to evaluate or value⁵².

6.1 Efforts by the ECOWAS to Combat the Proliferation of Small Arms

ECOWAS member states consider the proliferation of small arms and light weapons to constitute a major threat to peace and stability within ECOWAS member states. Over the years, ECOWAS has made significant efforts to combat the proliferation of small arms and light weapons in the sub region. Of all the sub-regional initiatives, ECOWAS has made the most dramatic strides toward curbing the illicit trade in small arms, with its unprecedented moratorium on the import or manufacture of small arms in the region. In June 2006, the ECOWAS secretariat approved a legally binding version of the moratorium after the West Africa Action Network on Small Arms, a regional nongovernmental organization assisted by the aid agency Oxfam, succeeded in developing acceptable treaty language⁵³.

The moratorium finally put into law among the ECOWAS countries began as an initiative by Mali in 1993. The aim of the moratorium has been widely applauded as it challenges the main aspects of the small arms and light weapons trafficking that makes it difficult to stop. It calls for

⁵⁰ Ibid, Article 6.

⁵¹ Osimen, Goddy Uwa, Anegbode, E. John, Isaac Adi, "The Role of ECOWAS in the Fight against the Proliferation of Small Arms and Light Weapons in West-Africa Sub-Region", *International Journal of Political Science (IJPS)* Volume 6, Issue 4, 2020, <https://doi.org/10.20431/2454-9452.0604001> www.arcjournals.org, PP 1-11 .

⁵² Ibid.

⁵³ Osimen, Goddy Uwa, Anegbode, E. John and Isaac Adi, "The Role of ECOWAS in the Fight against the Proliferation of Small Arms and Light Weapons in West Africa Sub-Region", *International Journal of Political Science (IJPS)*, Vol. 6 No. 4, 2020, p 7.

harmonized national controls among member states, supporting training programs for military, police, and security forces, enhanced border controls, stockpile management, and facilitating dialogue with arms supplier countries. As a result, the moratorium is seen as a plausible and effective means to end the trafficking of small arms and light weapons⁵⁴.

In few of the conventions, ECOWAS member states agreed to control, regulate and/or prohibit the transfer, manufacture and possession of small arms and light weapons. They also agree to take measures to promote transparency; cooperation and exchange of information among member states. They are deeply concerned about the flow of small arms and light weapons into West Africa and recognize the need to control arms transfers and to prevent, combat and eradicate the illicit manufacture, excessive accumulation, trafficking, detention and use of small arms and light weapons. In light of this, and recognizing the principles and obligations contained in previous agreements, member states agree to the articles contained in this convention⁵⁵.

Efforts to combat the proliferation of small arms are included among them, alongside the Community's other concerns. Provisions that deal exclusively with this problem, and that follow on from these two general instruments, can be found in other ECOWAS legal instruments, namely: The Moratorium on the Importation, Exportation and Manufacture of Light Weapons in ECOWAS member states (referred to as simply the Moratorium), adopted on 31 October 1998; The plan of action for implementation of the Programme for Coordination and Assistance for Security and Development in Africa (PCASED), adopted in 1998; The code of conduct for the implementation of the Moratorium, adopted on 10 December 1999.

Majorly, the question of small arms is dealt with in particular in articles 50 and 51 of the Protocol relating to the Mechanism. Article 50, on —Control of the proliferation of small arms provides as follows: “While taking into account the legitimate national defence and security needs, and those of international peacekeeping operations, ECOWAS shall establish effective measures to: (a) Control the importation, exportation and manufacture of small arms and eradicate the illegal flow of such arms; (b) Register and control the movement and use of legitimate arms stocks; (c) Detect, collect and destroy all illicit weapons; (d) Encourage member States to collect and destroy all surplus weapons⁵⁶.

ECOWAS Convention on small arms and light weapons 2006. Article 51, therein is on preventive measures against the illegal circulation of small arms, provides as follows: “ECOWAS shall take all the necessary measures to combat illicit trafficking and circulation of small arms. These measures shall include: (a) Developing a culture of peace; (b) Training for military, security and police forces; (c) Enhancing weapons control at border posts; (d) Establishment of a database and regional arms register; (e) Collection and destruction of [surplus and] illegal weapons; (f) Facilitating dialogue with producers and suppliers; (g) Reviewing and harmonizing national legislation and administrative procedures; (h) Mobilizing resources⁵⁷.

6.2 Cases of Wrong and Irresponsible Transfer of Weapons

⁵⁴ Ibid.

⁵⁵ Ibid, p8.

⁵⁶ ECOWAS Convention on Small Arms and Light Weapons 2006, Article 50.

⁵⁷ Ibid, Article 51.

There have been several cases and incidents in West Africa involving the wrong or irresponsible transfer of weapons that violate and offend the principles of the Arms Trade Treaty and other international or regional legal frameworks. Below are some instances:

1. Libya and the Regional Spillover in 2011

After the fall of Muammar Gaddafi in 2011, Libya's stockpiles of arms were looted and trafficked across the Sahel region into Mali, Niger, Nigeria, and Chad. These weapons armed insurgent groups, militias, and terrorist networks such as Boko Haram and Al-Qaeda movement, this is in violation of Articles 6 and of the Arms Trade Treaty.

2. Nigeria and Diversion of Imported Arms (2014–2020)

Nigeria has imported large quantities of small arms and light weapons for counter-insurgency operations. However, investigations found evidence of diversion of state imported arms to non-state actors and human rights abusive units within the armed forces⁵⁸. This is contravention of the provision of Article 7 (1) (b) (ii) of the Arms Trade Treaty and ECOWAS Convention on Small Arms and Light Weapons (2006), which demands strict control, marking, and tracking of weapons.

3. Côte d'Ivoire (2002–2011 Civil War Period)

During the Ivorian civil war, despite a UN arms embargo (2004–2016), weapons were illicitly transferred to both government and rebel forces, often through third party states and brokers. This is in violation of the UN Security Council Arms Embargo and Arms Trade Treaty, particularly, Article 6 (1), prohibiting transfers that contravene UN Security Council measures.

4. Mali and Illicit Transfers to Armed Groups (2012–Present)

Foreign supplied arms meant for government use have been diverted or captured by non-state armed groups in Mali, aggravating internal conflict and humanitarian abuses. This is in violation of Arms Trade Treaty, particularly, Article 11, Diversion Prevention, requires states to take measures to prevent arms from being diverted.

5. Burkina Faso (2021–2024).

Recent reports show state acquired arms being diverted to civilian self defence militias implicated in ethnic massacres⁵⁹. This violates Article 7, in relation to risk assessment of use in human rights violations. The irresponsible transfer and diversion of weapons in West Africa have repeatedly offended international law, especially the Arms Trade Treaty and regional ECOWAS norms. The humanitarian consequences, civilian casualties, displacement, and prolonged conflicts highlight the need for stricter export controls, transparency, and accountability mechanisms among state parties.

7. Legal Review of New Weapons

The development and deployment of new weapons and methods of warfare pose significant challenges to the principles and rules of International Humanitarian Law, it is essential to ensure that new military capabilities comply with International Humanitarian Law obligations, protecting civilians and preventing unnecessary suffering, and thus the aim of Article 36 is to prevent the use of weapons that would violate international law in all circumstances and to impose restrictions on the use of weapons that would violate international law in some circumstances, by determining their lawfulness before they are developed, acquired or otherwise incorporated into State's. The requirement that the legality of all new weapons, means and

⁵⁸ Report of Amnesty International and Small Arms Survey.

⁵⁹ Reports by UNIDIR and Amnesty, 2023–2024.

methods of warfare be systematically assessed is arguably one that applies to all States, regardless of whether or not they are party to Additional Protocol I. It flows logically from the truism that States are prohibited from using illegal weapons, means and methods of warfare or from using weapons, means and methods of warfare in an illegal manner. The faithful and responsible application of its international law obligations would require a State to ensure that the new weapons, means and methods of warfare it develops or acquires will not violate these obligations.⁶⁰

Article 36 when interpreted along with article 82⁶¹ makes it clear that military commanders should always have access to legal advisers who can guide them on International Humanitarian Law and on how best to train their forces in this area. Together, these provisions create a system designed to ensure that armed forces conduct operations strictly in line with International Humanitarian Law and the human rights law, by requiring legal reviews of the weapons, tactics, and strategies they plan to use. Article 36 doesn't spell out the exact process for deciding whether a weapon or method of warfare is lawful. Instead, it places the responsibility on each State to carry out its own assessment. In practice, this means that whenever a new weapon, tool, or tactic is introduced, the State must evaluate it against the rules set out in the AP and any other relevant principles of international law.

International Humanitarian Law obliges States reviewing the legality of any weapon they intend to develop or acquire, by clearing whether the weapon or method intended is prohibited in some or all circumstances, or whether the weapon is prohibited under a specific treaty or even if it is an indiscriminate weapon or of such nature to cause superfluous injury, unnecessary suffering, or severe damage to the environment.⁶²

In 2006, in order to assist States, the ICRC drew up a guide to the legal review of new weapons, means and methods of warfare. It was prepared in consultation with military and international law experts from different countries. The guide did not provide a definitive statement on how new weapons, means and methods of warfare should be reviewed, however it does reflect the ICRC's interpretation of the relevant legal requirements and the experience and practice of the drafting States that so far have established weapons review procedures.

In conducting reviews, a State must also consider the prohibitions or restrictions on the use of specific weapons, means and methods of warfare pursuant to customary international law. These prohibitions or restrictions would include the use of poison or poisoned weapons, the use of biological and chemical weapon, use of herbicides as a method of warfare, use of bullets which expand or flatten easily in the human body, anti-personnel mines, use of bullets which explode within the human body and the use of weapons, the primary effect of which is to injure by fragments which are not detectable by x-ray in the human body are prohibited.⁶³ If no specific prohibition or restriction is found to apply, the weapon or means of warfare under review and the

⁶⁰ Kathleen Lawand, A Guide To The Legal Review of New Weapons, Means and Methods of Warfare; Measures To Implement Article 36 of Additional Protocol I of 1977, International Committee of the Red Cross Geneva, January 2006, p 4.

⁶¹ Article 82, AP1.

⁶² ICRC, n 10.

⁶³ J. M. Henckaerts and L. Doswald-Beck (eds.), Customary International Humanitarian Law, Cambridge: Cambridge University Press, 2005.

normal or expected methods by which it is to be used must be assessed in light of the general prohibitions or restrictions provided by treaties and by customary international law applying to all weapons, means and methods of warfare. In such situation therefore where there is no specific applicable instrument, it remains governed under the principles of humanity and the dictates of public conscience as stipulated in article 1(2) of AP I, in the preamble to the 1907 Hague Convention (IV), and in the preamble to the 1899 Hague Convention (II) which is referred to the ‘martens clause’ stating that in cases not covered by the AP I or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from dictates of public conscience.

8. Conclusion

The transfer of weapons today stands at the intersection of international law, politics, and human security. The **Arms Trade Treaty**, adopted to regulate the global arms trade, emphasizes that arms transfers must not contribute to violations of international humanitarian or human rights law. It establishes a humanitarian threshold that places human life and dignity at the center of state decisions on arms exports. This principle has been tested in practice, as states must constantly weigh geopolitical interests against humanitarian obligations. The Treaty thus represents a commitment by the international community to ensure that weapons do not become tools of oppression or human suffering, but rather are governed by law, transparency, and accountability.

In the context of Europe, the **European Union’s transfer of arms to Ukraine** illustrates both the relevance and the tension within humanitarian limits to arms trade. While the transfers are justified under the right of self-defence and collective security, they also raise questions about the consistency of humanitarian principles when compared with other conflict regions. The EU, as a regional bloc and a party to the Arms Trade Treaty, must ensure that its arms exports conform to the Treaty’s standards, conducting risk assessments to avoid the misuse of weapons and ensuring compliance with international humanitarian law. This situation underscores the delicate balance between legitimate defence support and the potential escalation of human suffering, a balance that the Arms Trade Treaty seeks to preserve.

In contrast, **West Africa’s experience with the misuse and diversion of weapons** demonstrates the consequences of weak control systems and disregard for humanitarian limits. Illicit transfers, diversions, and misuse of imported arms have prolonged conflicts, empowered non-state actors, and contributed to grave violations of international humanitarian law. These realities offend the core principles of the Arms Trade Treaty and the ECOWAS Convention on Small Arms and Light Weapons, revealing a gap between legal commitments and enforcement. Respecting the humanitarian limits to arms transfer, whether in Europe, Africa, or elsewhere, therefore requires more than policy declarations; it demands genuine adherence to legal obligations, transparency, and moral restraint to ensure that weapons serve the cause of security and peace rather than human misery.