

The Urgent Humanitarian Concern

by Peter Herby and Lena Eskeland

Sometimes, we are asked why the International Committee of the Red Cross (ICRC) is concerned about the proliferation and availability of small arms. Is this not a crime-related issue, or a political disarmament issue, which has mostly to do with the legitimate rights of sovereign states to defend themselves? To a certain degree it is, but the problems caused by small arms go far beyond this.

A single shot from a standard rifle fired into a crowded market is normally a criminal incident. The unloading of dozens of bullets a minute from an automatic weapon into that same market can unleash a bloodbath. An artillery shell landing in such a situation can arouse passions that render violations of the laws of war virtually inevitable. The proliferation of, and easy access to, these weapons give people—including children—an incredible power. As one woman in Sierra Leone said, “People who hold the guns have all the power. The rebels who killed my children and my husband, they raped me. They raped me openly in the town square.”¹

In recent years, these types of incidents have become all too familiar to delegates of the ICRC and their partners from National Red Cross and Red Crescent Societies in war-torn countries. The unregulated availability of weapons, in particular small arms, combined with their frequent use in violation of the most basic humanitarian norms, poses a direct challenge to the dual mandates of the ICRC—to assist the victims of conflict and to promote respect for international humanitarian law.² Both of these missions are today undermined by the uncontrolled spread and abusive use of arms. The increasingly devastating effects for civilian populations, and the difficulties of providing humanitarian assistance in an environment where arms have become widely available to many segments of society, are well known to most humanitarian relief agencies today. The high levels of civilian death and injury in recent conflicts are no longer being seen simply as an inevitable by-product of these conflicts. Rather, they are increasingly viewed as a result of inadequate or nonexistent control of the flow of weapons—both internationally and domestically. Only recently, however, have the relationships among the availability of weapons, the worsening situation of civilians during and after conflict, and the challenges of providing humanitarian assistance been addressed directly.

ARMS AVAILABILITY AND THE IMPACT ON CIVILIANS

In recognition of the trends described above, the Twenty-Sixth International Conference of the Red Cross and Red Crescent (1995) called upon the ICRC “to

Peter Herby and Lena Eskeland are with the Mines-Arms Unit, Legal Division, International Committee of the Red Cross, Geneva, Switzerland.

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.”³

In fulfillment of this mandate, the ICRC has, since 1996, attempted to distill its experience with the impact on civilians of high levels of arms availability. It carried out two case studies, analyzing information drawn from its sizeable medical database on patients treated in the organization’s hospitals and elsewhere by its medical staff. The objectives of these two case studies were to examine the circumstances in which weapon injuries were inflicted and to assess the levels of weapon casualties (death and injury) during and after periods of conflict, in the absence of disarmament. This work provides unique insights into the nature of arms-related injuries in two situations in which the ICRC has been involved. To our knowledge, these are among the few systematic studies that have been published on the nature of arms-related casualties suffered by the local population in war-torn societies. Following are some of the specific findings from these case studies.

1. One might expect a dramatic drop in arms-related death and injury in a postconflict period. In one war-torn area of Afghanistan where high levels of arms remained in circulation, however, the annual incidence of weapons-related casualties decreased by only 33 percent during the eighteen months following the end of hostilities. The mortality rate from injuries actually increased over the same period.
2. In a region of northwest Cambodia, civilians accounted for 71 percent of noncombat weapon casualties and 42 percent of combat-related casualties (death and injuries inflicted as a direct result of interfactional fighting or by landmines). Weapons-related casualty rates were reduced during the UN’s presence but increased to levels comparable to those preceding the peace accord following the UN’s departure in 1993.

Both of these case studies indicate that to civilians, the threat of arms-related death or injury in noncombat settings can approach or exceed that during conflict periods if weapons are not removed.

The ICRC also carried out a survey among senior delegates with a collective experience of forty-one assignments in conflict and postconflict settings on four continents during the 1990s. The objective was to gather the *perceptions* of ICRC staff on the degree of arms availability within various segments of given populations, the nature of arms-related incidents involving civilians, and the direct impact of arms availability on ICRC field operations.

There was general consensus among respondents that arms were regularly used against civilians for criminal or coercive purposes. The respondents also indicated that ICRC operations were interrupted more than once per month by armed security threats, impeding access and denying war victims the assistance and protection pro-

vided for by the Geneva Conventions. In all contexts, assault rifles were seen as the principal weapon type responsible for civilian death or injury.

The threat to civilians in noncombat settings can approach or exceed that during conflict periods if weapons are not removed.

In 1999, the results of these two case studies, and the survey among ICRC delegates, were published in the study “Arms Availability and the Situation of Civilians in Armed Conflict.”⁴ The ICRC study came to the following main conclusions.

Civilians often are the primary victims of unregulated arms availability. Civilian casualties outnumber those of combatants in many internal conflicts and have increased throughout the century in parallel with the development of new military technologies. Weapons previously available primarily to organized armed forces are now in the hands of a wide variety of people involved in conflict and postconflict situations. These include highly destructive weapons such as automatic rifles capable of firing hundreds of rounds per minute, rocket-propelled grenades, mortars, and landmines.

Lack of access is a serious danger. Disease, starvation, and abuse increase when humanitarian agencies, including the ICRC, are denied access to the victims due to attacks on humanitarian workers, mined transport lines, or the threat of armed violence. In a large number of recent conflicts, specific regions or even entire countries have become “no go” areas for humanitarian workers because of attacks or the credible threat of attacks on them. Indeed, ICRC field staff themselves experienced a growing number of casualties through the mid-1990s. Although this may have been due to the changing nature of conflict, increased proximity to front lines, and perceived politicization of humanitarian aid, the availability of small arms undoubtedly also played an important role. In addition to the impact on the safety of personnel, weapons availability increases the financial cost of humanitarian operations. Where relief supplies have to be transported by air because of security concerns, an operation’s cost can increase ten to twenty times.

The end of conflict is not really the end. Suffering can continue for years after the fighting ends, since easy availability of weapons engenders a culture of violence, undermining the rule of law and threatening efforts at reconciliation between the former warring parties.

Arms availability presents an urgent humanitarian concern. In addition to its assistance mandate, the ICRC is charged with helping states to promote knowledge of, and respect for, international humanitarian law (IHL). Widespread availability of small arms undermines the very fabric of that law—one of the principal means of protecting civilians in times of conflict. IHL assumes that military-style arms are in the hands of forces with a certain level of training, discipline, and control. When such weapons become available to broad segments of the population—including undisciplined groups, bandits, mentally unstable individuals, and even children—the task of

ensuring basic knowledge of humanitarian law among those in possession of arms becomes difficult if not impossible.

Compared with distributing arms, creating an understanding and acceptance of humanitarian rules is a profoundly difficult and time-consuming task. It should come as no surprise that as highly lethal weapons spread throughout a given population, the potential for violations of international humanitarian law in times of conflict increases.

Although the ICRC study does not suggest that excessive availability of weapons is the *cause* of IHL violations or deterioration in the situation of civilians, it indicates that the unregulated transfer of weapons and ammunition can facilitate such violations, increase tensions, heighten civilian casualties, and prolong conflicts. Among the central conclusions is that because it is largely free of international control, the current pattern of transfers of small arms, light weapons, and related ammunition should be a matter of urgent humanitarian concern.

POSSIBLE WAYS FORWARD

The trade in light weapons is a complex phenomenon, involving many types of actors; existing knowledge of the dynamics involved is far from comprehensive. It is also evident that traditional arms-control approaches are not well suited for the control of small arms and light weapons. Thus, much creative effort—involving the participation of many types of experts, including representatives of governments, industry, police and customs services, humanitarian aid organizations, and human rights groups—will be needed to develop successful approaches and strategies.

Focus on Munitions and Ammunition. It is important to consider controls on the transfer of not only arms but also munitions and ammunition. The shelf life of many of the tens of millions of small arms and light weapons now in circulation may be measured in decades if the weapons are properly maintained. By contrast, it appears that factories for the production of munitions and ammunition can be far more easily identified. The reliable shelf life for these items is said to be shorter than for the weapon itself, and their stocks need to be replenished regularly. As a result, efforts to limit the availability of munitions and ammunition could, in the short term, yield significant results.

The Importance of IHL in Arms-Transfer Norms and Policies. While the ICRC considers that the primary responsibility for compliance with international humanitarian law falls upon weapons users, states and private companies engaged in production and export bear a degree of political, moral, and, in some cases, legal responsibility before the international community for the use made of their weapons and ammunition. The ICRC has encouraged governments, regional organizations, and nongovernmental organizations involved in bringing about arms-transfer limitations to recognize that IHL is the body of law most relevant to the ultimate use of transferred arms and ammunition. Indeed, the stated purpose of most such transfers is to enable recipients to engage in armed conflict.

Specifically, the ICRC has called on states urgently to review their policies concerning the production, availability, and transfer of arms and ammunition in light of their responsibility under common Article 1 of the Geneva Conventions to “respect and ensure respect” for international humanitarian law. In 1999, states party to the Geneva Conventions committed themselves (in the Plan of Action adopted by the Twenty-Seventh International Conference of the Red Cross and Red Crescent) to “examine the establishment of means to integrate consideration of respect for international humanitarian law into national decision making on transfer of arms and ammunition.”⁵

It is important that states convert this commitment into reality by promoting criteria based on humanitarian law and human rights for arms transfers in norms adopted at the national, regional, and international levels. These measures would be a means of reinforcing Article 1 common to the Geneva Conventions and of improving the implementation of the whole fabric of IHL. As a step toward limiting the availability of arms and ammunition among users likely to commit violations of international humanitarian law, states could develop codes of conduct for arms transfers that contain clear references to, and indicators of, respect for international humanitarian law, or add such references and indicators to those existing standards (laws or policy) that do not include them.

IHL Norms in Recent Regional Initiatives. In the last two years, governments, regional organizations, and NGOs have begun to develop new mechanisms, laws, and codes of conduct to limit small-arms proliferation. Nevertheless, it is regrettable that among the existing body of export codes and national legislation known to the ICRC, few mention respect for international humanitarian law by recipients of arms as a central element in decisions on arms transfers. We discuss here some of the regional initiatives that do include such language.

European Union (EU). The European Union adopted in 1998 the EU Joint Action on Small Arms and the EU Code of Conduct on Arms Transfers. The latter stipulates eight criteria on arms exports. Specifically, member states should take into account, *inter alia*, the record of the buyer country with regard to “its compliance with international commitments, in particular on the non-use of force, including under international humanitarian law applicable to international armed conflicts.”⁶ Although this reference to international humanitarian law perhaps could have been better formulated (as international humanitarian law regulates the use rather than the nonuse of force), it reflects the intention of EU states to take respect for IHL into account in arms-transfer decisions.

Organization of African Unity (OAU). In November 2000, the OAU held a preparatory expert meeting on the illicit proliferation, circulation, and trafficking of small arms and light weapons, followed by a ministerial meeting in Bamako, Mali. The meetings resulted in the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons, which highlighted the importance of international humanitarian law when addressing the small-arms issue.

Organization for Security and Cooperation in Europe (OSCE). The OSCE's Document on Small Arms and Light Weapons, adopted in November 2000, seeks to reduce and prevent the excessive accumulation and uncontrolled spread of small arms by articulating norms regarding manufacture, marking, record keeping, export control, border and customs mechanisms, and cooperation and information exchange among law-enforcement and customs agencies in the OSCE region. Specifically, each participating state agreed to avoid issuing licenses for exports where it identifies a clear risk that the small arms in question might "prolong or aggravate existing armed conflict, taking into account the legitimate requirement for self-defence, or threaten compliance with international law governing the conduct of armed conflict."⁷

North Atlantic Treaty Organization (NATO). NATO's Parliamentary Assembly adopted in November 2000 a "Committee Resolution on Small Arms Control." This resolution urges member states to "harmonise national approaches through wider acceptance and application of guidelines and codes of conduct—such as the EU Code of Conduct" and to "enhance evaluation of recipient States' records with regard to adherence to international humanitarian law and control over stocks and flows of small arms."⁸

Despite the progress implied by the existence of these regional initiatives, as yet no clear indicators have been adopted to judge a recipient's likelihood of compliance with international humanitarian law. The following indicators of respect for IHL could be incorporated into codes of conduct and national laws and policies on arms transfers (exports) as an aid in assessing whether the potential recipient is likely to comply with humanitarian law:

1. Has the potential recipient adhered to the relevant IHL treaties?
2. Are the potential recipient's forces trained in IHL?
3. Are there mechanisms to punish violators?
4. Are authority structures able to ensure compliance with IHL?
5. Is the potential recipient the actual end-user?
6. Will the potential recipient maintain control over the arms and ammunition transferred?

Other International Measures. In addition to the above measures specifically relating to respect for humanitarian law, the ICRC study urges states to consider measures of a more general nature aimed at strengthening transparency and accountability in arms transfers. In particular:

1. Establish an international system for the marking of small arms, light weapons, and related munitions and ammunition. Marking with data on the date, country and company of manufacture could make it easier to monitor arms flows and lead to greater accountability and responsibility among arms suppliers.
2. Establish or reinforce surveillance and enforcement mechanisms to ensure respect for UN and regional arms embargoes.

3. Extend the scope of the existing UN Register of Conventional Arms Transfers to cover small arms and light weapons, beginning with specific weapons such as assault rifles and rocket-propelled grenades, which have been used to inflict high levels of civilian death and injury.

National Measures. As regards national controls on the availability of arms, the following measures should be considered.

1. Reinforcement of the ability of states to identify and put an end to illegal cross-border transfers of arms and ammunition.
2. Establishment of mechanisms for ensuring that military-style arms and ammunition are available only to authorized users and that such weapons in the possession of others are collected and destroyed.
3. Provisions in postconflict settlements to ensure that states, with the assistance of the international community, will maintain or acquire direct control over arms and ammunition and destroy surplus weapons at the earliest possible time.
4. Vigorous efforts to ensure that weapons and ammunition rendered surplus by the modernization of arsenals are kept under strict surveillance and destroyed rather than exported. As compared with many other long-term measures proposed for addressing the problem of small arms and light weapons, such steps can have an immediate and beneficial impact. On the other hand, failure to address the issue of surplus arms as a matter of urgency could undermine most other current efforts.

Reducing Violations of International Humanitarian Law. In addition to limiting access to arms for those likely to violate international humanitarian law, a number of complementary steps could contribute to the reduction of civilian casualties in conflict and postconflict situations.

1) *Instill humanitarian principles in the general population and young people in particular.* In many societies, acts such as the killing, torture, and rape of civilians and the execution of prisoners are accepted as a matter of course in conflict situations, even though they violate basic humanitarian principles and the law of armed conflict. Such acts are often presented as normal and acceptable in film, television, and news portrayals of armed conflict, thus contributing to a “culture of violence.” Passive acceptance of this type of behavior means that violators of international humanitarian law do not incur the legitimate revulsion of the societies on which they depend for support.

Increased efforts are needed to ensure that all segments of society are aware of the limits—grounded in their own cultures as well as in international law—on the use of weapons even in times of armed conflict. An emphasis on influencing the attitudes of young people is particularly important in light of the widespread use of young combatants in internal armed conflicts. The International Movement of the Red Cross

and the Red Crescent, of which ICRC is one component, has recently committed itself to using its network of Red Cross and Red Crescent Societies to promote a culture of nonviolence—in addition to promoting public awareness of the human costs of unregulated arms transfers and widespread arms availability.

The failure of states to provide secure living conditions for their citizens creates a vicious cycle.

2) *Increase training of armed forces in international humanitarian law.* In peacetime, a great deal more must be done to ensure that potential combatants not only understand the fundamental rules applicable in war but are also aware that compliance with these rules is expected by their commanders and that violations will be punished. This will require political will and provision of adequate resources. It will also require, where possible, enhanced efforts at dialogue with nonstate groups on the part of all those who have access to them—whether financial supporters, leaders within their own societies, or external actors.

3) *Ensure personal security by means other than weapons.* A vicious cycle of insecurity fuels a demand for arms, which in turn creates a demand for yet more weapons. The trend towards the privatization of security and the failure of states to assume their responsibility to provide secure living conditions for all citizens is an issue that needs urgently to be addressed. Clearly, this will require resources not only for police and criminal justice systems but also for economic and social development. It also implies renewed determination among political and social leaders to resolve conflicts without resorting to force and the support of the international community for efforts to that end.

CONCLUSION

The international community in recent decades has adopted wide-ranging prohibitions and limitations on the transfer of chemical, biological, and nuclear weapons, missile systems, and certain components of these technologies. States in some regions have established controls on the transfer of major conventional weapons systems. However, until recently, little attention has been given to the transfer of small arms and light weapons, which have inflicted most of the death and injury in recent conflicts.

Recent small-arms initiatives on the national, regional, and international levels are encouraging. Nevertheless, much work still remains to be done, both within and outside of the UN process. Both governments and civil society have important roles to play.

In the short term, the challenge will be to raise awareness of the human costs of arms availability and to put the issue squarely on the international agenda. It will be necessary to challenge the fatalistic acceptance of daily news reports of armed attacks on civilians for which no one is held responsible. It will also be necessary to recognize the fact that a large proportion of all illicit transfers begin with weapons that were


originally transferred legally, and that few problems will be solved without addressing both licit and illicit aspects of arms transfers.

As a part of this, the ICRC believes it is of utmost importance to ensure that the “human cost” of the widespread proliferation of arms is at the forefront of the debate before, during, and after the July 2001 UN Conference on Small Arms. The link between unregulated arms availability and the detrimental consequences for civilians in conflict and postconflict situations should be recognized in any documents coming out of the UN conference. Furthermore, governments should recall their obligation to respect and ensure respect for international humanitarian law.

In the long term, the principle needs to be established that those who supply arms in situations where violations of international law can be expected share responsibility for the use of their weapons. Success in reducing the human cost of unregulated arms proliferation will depend on creating a sense of responsibility and accountability among those who produce, those who distribute, and those who use arms. Weapons serve as tools for implementing life-and-death decisions and are instrumental both in enforcing and in undermining the rule of law. They cannot be considered as simply another form of commercial goods to be governed by the law of supply and demand.

An evaluation of the likely respect for international humanitarian law by the recipient should be an integral part of all decisions by governments and arms manufacturers on the supply of weapons and ammunition. Codes of conduct for arms transfers are one promising approach to developing agreement on what constitutes responsible practice, but they need to be strengthened to include specific criteria, and to be implemented in order to be effective.

The ICRC strives to ensure that general and special protections to which civilians are entitled by international humanitarian law become realities in each and every armed conflict. Improved protection of civilians in situations of armed conflict *can* be achieved, through better *implementation* of and *respect* for existing humanitarian law and other international norms. However, addressing the current unregulated availability of small arms and light weapons is also an indispensable element in improving respect for IHL.

The ICRC considers that by requiring respect for humanitarian law from those who seek to arm themselves, states will make a major contribution to the protection of civilians from the type of unspeakable suffering that the world saw in conflicts throughout the last century. In so doing, states will not only strengthen the basis for the rule of law but also promote reconstruction of war-torn societies and long-term social and economic development. 

Notes

1 ICRC, “Women and War,” *People on War* radio series, March 2000.

2 International humanitarian law is a set of rules that, for humanitarian reasons, seeks to limit the effects of armed conflict. In particular, it protects those who are not, or are no longer, taking part in fighting and restricts the means and methods of warfare. International humanitarian law is also called the “law of war” and the “law of armed conflict.” Its principal instruments include the Geneva Conventions of 1949 and their Additional Protocols of 1977.

3 Meeting of the Intergovernmental Group of Experts for the Protection of War Victims, Geneva, January 23–27, 1995; Recommendation VIII(c), endorsed and adopted by the 26th International Conference of the Red Cross and Red Crescent, 1995.

4 “Arms Availability and the Situation of Civilians in Armed Conflict,” ICRC, June 1999.

5 “Plan of Action,” Final goal 1.5 (23), 27th International Conference of the Red Cross and Red Crescent, 1999.

6 *EU Code of Conduct*, Criterion Six.

7 *OSCE Document on Small Arms and Light Weapons*, Section III, (A), 2(b), (v).

8 NATO Parliamentary Assembly, *Resolution on Small Arms Control*, Art. 8 d.