

Arms transfers, humanitarian assistance and international humanitarian law

by **Peter Herby**

The International Committee of the Red Cross has witnessed in its work for war victims throughout the world the increasingly devastating effects for civilian populations of the proliferation of weapons, particularly small arms. 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. However, until recently the relationships between the availability of weapons, the worsening situation of civilians during and after conflict and the challenges of providing humanitarian assistance have not been addressed directly.

The exceedingly high levels of civilian death and injury in recent conflicts, from Bosnia to El Salvador to Liberia to Afghanistan, are no longer being seen simply as an inevitable by-product of these conflicts. Rather, these results are increasingly viewed as a result of inadequate or non-existent control of the flow of weapons — both internationally and domestically. Although few would claim that the weapons themselves are the primary source of recent conflicts, it can be argued convincingly that the easy availability of arms and ammunition increases tensions, heightens civilian casualties, prolongs the duration of conflicts and renders post-war reconciliation and rebuilding far more difficult.

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

Peter Herby is coordinator of the Mines-Arms Unit in the ICRC's Legal Division.

International Committee of the Red Cross — to assist the victims of conflict and to promote respect for international humanitarian law.

It is clear that the high levels of civilian casualties, which have steadily increased in this century in parallel with the development and proliferation of sophisticated military technology, are *facilitated* (though not necessarily *caused*) by the availability of arms and ammunition. Weapons previously available primarily to organized armed forces are now in the hands of a wide variety of people involved in conflict and post-conflict situations. These include highly destructive weapons such as automatic rifles capable of firing hundreds of rounds per minute, rocket-propelled grenades, mortars and landmines. Whereas previously a single shot fired might have been fired into a crowded market and would have constituted an isolated criminal incident, today it is equally feasible for an individual to fire several hundred bullets from one of the automatic weapons now readily available and thereby unleash an orgy of ethnic killings and civil unrest.

The suffering of civilians affected by conflict grows still worse when the ICRC and other agencies are denied access to the victims owing to direct attacks, 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 on account of attacks or the credible threat of attacks on them. ICRC field staff 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 the 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, weapon availability increases the cost of humanitarian operations. When relief supplies have to be transported by air because landmines have been used to block roadways, the operation’s cost must be multiplied up to 25 times.

Beyond the immediate problems described above, the widespread availability of arms threatens to undermine the fabric of international humanitarian law — one of the principal means of protecting civilians in times of conflict. In addition to its assistance mandate, the ICRC is charged with helping States to promote knowledge of and respect for humanitarian law. However, this body of law assumes that military-style arms are in the hands of armed 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 insecure individuals and even children, the task of ensuring basic knowledge of

humanitarian law among those in possession of such 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 humanitarian law increases. In the most generous interpretation, the direct and illegal attacks of 1996 on clearly identified Red Cross vehicles and on a hospital reflect a lack of understanding of basic humanitarian norms and of the role of a neutral intermediary in conflict zones. But such attacks may also represent intentional attempts to destabilize the areas concerned.

Even after armed conflict has ended, civilian suffering often continues for years as the widespread possession of fire arms fosters a "culture of violence", undermines the rule of law and threatens efforts at reconciliation between the former warring parties. A recent study of the ICRC's medical database on weapons-related casualties showed a decrease in such casualties of only 20-40 % (depending on weapon type) during the eighteen months following the end of armed conflict in one particular region.¹ One might have expected a far more dramatic drop in arms-related death and injury in a post-conflict period.

Given the trends described above, the International Red Cross and Red Crescent Movement has become increasingly concerned with the problem of arms transfers and availability. In 1995, the 26th International Conference of the Red Cross and Red Crescent, which included 135 States party to the Geneva Conventions of 1949, mandated the ICRC to use its first-hand experience to conduct a study on "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".² This work is currently being carried out on the basis of interviews with a wide variety of current and former field delegates, the ICRC's medical database and its analysis of international humanitarian law.

¹ David Meddings, "Weapons injuries during and after periods of conflict: retrospective analysis", *British Medical Journal*, No. 7120, 29 November 1997, pp. 1417-1420.

² Meeting of the Intergovernmental Group of Experts for the Protection of War Victims (Geneva, 1995), Recommendation VIII, as endorsed by Resolution I of the 26th International Conference of the Red Cross and Red Crescent, Geneva, 1995, reprinted in *IRRC*, No. 310, January-February 1996, pp. 88 and 58 respectively.

The preliminary findings were reviewed by a panel of experts on arms transfers in Oslo in May 1998, with a final report and possible recommendations expected by the end of the year. The Expert Group meeting concluded, *inter alia*, that

“The growth of a culture of violence — encouraged by the easy availability of arms — is a major obstacle to developing peaceful, prosperous and just societies, particularly in countries recovering from violent conflict... The control of arms availability based on humanitarian law, development, human rights and other criteria should be among the international community’s highest priorities.”

The ICRC report will serve as the basis of further discussion at the 27th International Conference of the Red Cross and Red Crescent in November 1999.

In addition to the efforts of the ICRC, other components of the Red Cross and Red Crescent Movement have begun to address arms availability as a matter of humanitarian concern. The December 1997 session of the Council of Delegates, which brings together all National Red Cross and Red Crescent Societies, their International Federation and the ICRC itself, expressed its alarm at “the easy access of combatants and civilian populations unfamiliar with the requirements of international humanitarian law to a wide variety of weapons, particularly small arms, and their frequent use against civilian populations and in violation of basic humanitarian principles”.³ It called on the Movement to develop over the next two years a unified position on arms transfers and to clarify what role it could play in dealing with the problem. This process will move forward on the basis of the upcoming ICRC study and broad consultations within the Movement.

In a preliminary assessment of the problems from a humanitarian perspective caused by arms transfers, the ICRC made a number of observations and suggestions which will provide a conceptual framework for its forthcoming study on arms availability.⁴ These may be summarized as follows:

³ Resolution 8, section 4, Council of Delegates, Sevilla, 1997, reprinted in *IRRC*, No. 322, March 1998, pp. 152.

⁴ “Arms Transfers, Humanitarian Assistance and International Humanitarian Law”, ICRC document, 19 February 1998.

- The unregulated transfer of weapons and ammunition can heighten tensions, increase civilian casualties and prolong conflicts.
- Because it is largely outside of international control, the current pattern of small arms transfers is a matter of urgent concern.
- While the primary responsibility for compliance with international humanitarian law falls upon the actual users of weapons, States and businesses engaged in production and export bear some responsibility toward the international community for the use made of the weapons and ammunition they sell.
- Although States have an undisputed right under international law to retain armaments required for their security, they also have a solemn moral and legal responsibility, under Article 1 common to the Geneva Conventions of 1949, to “respect and ensure respect” for international humanitarian law. The transfer of arms and ammunition should be examined in this light. States should, in particular, consider whether the sale of weapons and ammunition can be viewed as simply another form of commerce.
- Given the serious threat to compliance with international humanitarian law, to international peace and security and to the social fabric of societies which the unregulated spread and undisciplined use of weapons presents, the ICRC will encourage States to consider the adoption of rules, based on humanitarian law and other criteria, governing the transfer of arms and ammunition.

In past decades small arms and light weapons have been almost entirely overlooked as a subject of arms control or even research interest. Attention focused on major conventional, nuclear and chemical weapon systems — where research could be more precise and where the presence of such weapons was considered particularly destabilizing. Meanwhile, the diffusion of tens of millions of small arms — the cause of most death and injury — flourished. In the last two years governments, regional organizations and NGOs have become increasingly involved in considering new mechanisms, including “codes of conduct”, to limit small arms proliferation. As they do so they should consider the importance of criteria based on international humanitarian law. It can be argued that humanitarian law is often the body of law most relevant to the stated purpose for which military arms and ammunition are transferred — to fight an armed conflict.

Although some have suggested using the worldwide campaign for a prohibition on anti-personnel landmines as a model for future work on

arms availability, any attempt simply to replicate that effort is unlikely to succeed. The appalling suffering caused by anti-personnel mines could be traced to a single small weapon of questionable military utility. The proposed solution — a complete prohibition — was as simple as it was dramatic. And even in the case of anti-personnel mines, decades of continued effort to universalize the “Ottawa Treaty”,⁵ to clear existing mines and to assist the victims will be required before the process can be said to be entirely successful.

While it is clear that the unregulated availability of weapons and their use to commit violations of human rights and humanitarian law exact a clearly unacceptable price in human terms, finding solutions is far from simple. The supply of small arms currently available in known and in hidden stockpiles around the world is truly enormous. Most of the weapons concerned would not in themselves be considered illegal in humanitarian law terms. Some are held by government armed forces for legitimate purposes; others by groups seeking justice through armed violence and yet others by criminal elements or other civilians who may be simply seeking a measure of personal security in the absence of any other form of protection in situations of extreme violence.

Even in situations where governments wish to limit the flow of armaments onto their territory, considerable resources and regional cooperation will be required. The success of the national moratorium on arms production, import and export being attempted by the government of Mali will require significant investment in police and customs forces which are beyond the capacity of the government to provide without outside help. Even with that help, much cooperation along with similar moratoria by neighbouring States will be required to reinforce Mali’s initiative.

Despite these differences, certain lessons may be drawn from recent efforts to end the “landmines epidemic”. A central element in the landmines campaign was a demonstration of the link between the mines and their victims. The appalling effects of unregulated arms flows before, during and after conflicts will need to be clearly demonstrated in a manner which engages the public conscience. Credible research and its exchange through modern communications technology will be just as important as

⁵ Convention on the prohibition of the use, stockpiling, production and transfer of anti-personnel mines and their destruction, of 18 September 1997, reprinted in *IRRC*, No. 320, September-October 1997, pp. 563-578.

it was for the work on landmines. Specific and realistic proposals for addressing the problem will need to be advanced, this time as part of a far more multifaceted approach. As was the case with landmines, progress will demand a high level of cooperation and trust among governments, non-governmental organizations and international humanitarian agencies — based on a sense of humanity and common purpose.

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. 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.

“Codes of conduct” for arms transfers are one promising approach to developing agreement on what constitutes responsible practice. One such draft code drafted by a group of Nobel laureates led by former Costa Rican President Oscar Arias includes criteria based on international humanitarian law. The European Union integrated a reference on respect for humanitarian law in the code of conduct on arms transfers it adopted in May 1998. The United States Congress is also discussing a code for exports which includes human rights but, not yet, humanitarian law criteria.

Success in reducing the human cost of unregulated arms proliferation will depend on creating a sense of responsibility and accountability among both those who produce and those who use arms. Weapons serve as tools for implementing life-and-death decisions and are instrumental both in enforcing and 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.