



ARTICLE 6.3 : ‘KNOWLEDGE’ AND RELATED TERMS

ATT WGETI SUB-WORKING GROUP ON ARTICLES 6&7, GENEVA, 26 APRIL 2022



ARTICLE 6.3, ATT

A State Party shall not authorize any transfer of conventional arms covered under Article 2(1) or of items covered under Article 3 or Article 4, if it has knowledge at the time of 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 Party.

(Art 6.3, 2013 Arms Trade Treaty)

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PREVENTING ARMS FROM BEING USED IN THE COMMISSION OF SERIOUS INTERNATIONAL CRIMES

*...arms ... or items 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 Party*

(Art 6.3, 2013 Arms Trade Treaty)

GENOCIDE

*In the present Convention, genocide means any of the following acts committed with **intent to destroy**, in whole or in part, a **national, ethnical, racial or religious group**, as such:*

- (a) Killing members of the group;*
- (b) Causing serious bodily or mental harm to members of the group;*
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;*
- (d) Imposing measures intended to prevent births within the group;*
- (e) Forcibly transferring children of the group to another group.*

(Art II, 1948 Convention on the Prevention and Punishment of the Crime of Genocide)

CRIMES AGAINST HUMANITY

1. For the purpose of the present draft articles, “crime against humanity” means any of the following acts when committed as part of a **widespread or systematic** attack directed against **any civilian population**, with knowledge of the attack:
 - (a) murder; (b) extermination; (c) enslavement; (d) deportation or forcible transfer of population; (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) torture; (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph; (i) enforced disappearance of persons; (j) the crime of apartheid; (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.
 2. For the purpose of paragraph 1:
 - (a) “**attack directed against any civilian population**” means a course of conduct involving the **multiple** commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a **State or organizational policy** to commit such attack;
- (Art 2, International Law Commission, Draft Articles on Prevention and Punishment of Crimes against Humanity, 2019)

WAR CRIMES

GRAVE BREACHES OF THE 1949 GENEVA CONVENTIONS (ARTS 50, 51, 130, 147)

*Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against **persons or property protected** by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.*

(Art 130, 1949 Convention (III) relative to the Treatment of Prisoners of War)

'ATTACKS DIRECTED AGAINST CIVILIAN OBJECTS OR CIVILIANS PROTECTED AS SUCH'

OTHER WAR CRIMES

ICRC recommendation:

- State Parties should adopt a broad scope of war crimes to implement Art 6.3, ATT.

ICRC resources :

- Commentary to Convention (III) relative to the Treatment of Prisoners of War (2020)
- ICRC study on customary international humanitarian law (2005) > Rule 156

<https://ihl-databases.icrc.org>



STATES' DUE DILIGENCE OBLIGATIONS TO PREVENT GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES

PREVENT GENOCIDE

*... a State may be found to have violated its obligation to prevent **even though it had no certainty**, at the time when it should have acted, but failed to do so, that genocide was about to be committed or was under way;*

*for it to incur responsibility on this basis **it is enough that the State was aware, or should normally have been aware**, of the **serious danger** that acts of genocide would be committed.*

(International Court of Justice, Case concerning application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, §432)

PREVENT WAR CRIMES

*The High Contracting Parties undertake to respect and **to ensure respect** for the present Convention in all circumstances.*

(Article 1 common to the 1949 Geneva Conventions)

*The High Contracting Parties also have positive obligations under common Article 1, which means they **must take proactive steps** to bring violations of the Conventions to an end and to bring an erring Party to a conflict back to an attitude of respect for the Conventions, in particular by **using their influence** on that Party.*

*This obligation ... includes an **obligation to prevent** violations when there is a **foreseeable risk** that they will be committed and to prevent further violations in case they have already occurred. ...The duty to ensure respect is to be carried out **with due diligence**.*

(ICRC 2020 Commentary to Art 1 of the Convention (III) relative to the Treatment of Prisoners of War, paras. 197-198)



THE PROHIBITION TO TRANSFER ARMS UNDER ART 6.3, ATT

- What standard of knowledge?
- What information sources?
- When to deny a transfer?
- What implications for the national control system?



‘KNOWLEDGE AT THE TIME OF AUTHORIZATION’

ACTUAL OR CONSTRUCTIVE KNOWLEDGE?

ICRC recommendation:

- The term ‘knowledge’ in Art. 6.3 should be interpreted objectively to include **what a State Party can normally be expected to know**, based on information in its possession or **reasonably available** to it.

Information sources:

List of possible reference documents to be considered by states parties in conducting risk assessment under article 7

WHEN TO DENY A TRANSFER?

ICRC position:

- A State Party must deny a transfer under Art. 6.3 if it has **substantial grounds to believe**, based on information in its possession or that is reasonably available it, that the weapons would be used to commit genocide, crimes against humanity or war crimes.

WHAT IMPLICATIONS FOR THE NATIONAL CONTROL SYSTEM?

*...a State’s obligation to prevent, and the corresponding duty to act, arise at **the instant that the State learns of, or should normally have learned of**, the existence of a serious risk that genocide will be committed.*

(International Court of Justice, Case concerning application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment of 26 February 2007, §431)



THANK YOU

For more information, please visit the ICRC's website:
www.icrc.org

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