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Council of Delegates of the International
Red Cross and Red Crescent Movement

10-11 November 2017, Turkey



EN

CD/17/13

Original: English
For information

**COUNCIL OF DELEGATES
OF THE INTERNATIONAL RED CROSS
AND RED CRESCENT MOVEMENT**

Antalya, Turkey
10–11 November 2017

**Weapons and International Humanitarian Law
Report on the Implementation of Resolution 7
of the 2013 Council of Delegates**

PROGRESS REPORT

**Document prepared by the International Committee of the Red Cross
in consultation with National Societies**

Geneva, September 2017

EXECUTIVE SUMMARY

Resolution 7 of the 2013 Council of Delegates called on States to take specific actions on weapons of humanitarian concern. The Resolution invited the International Committee of the Red Cross (ICRC), in cooperation with other components of the International Red Cross and Red Crescent Movement (the Movement), to report to the Council of Delegates on its implementation. This second progress report covers the period December 2015 to October 2017. It summarizes the key developments, reviews actions taken by the ICRC and National Societies and highlights future opportunities and challenges.

Efforts to ensure **responsible arms transfers** have gathered momentum, with 92 States having ratified or acceded to the Arms Trade Treaty (up from 72 in 2015). The ICRC and National Red Cross and Red Crescent Societies (National Societies) have continued to promote the adoption of effective controls on arms transfers, although challenges to the treaty's effective implementation remain.

There has been significant progress in implementation of the **Anti-Personnel Mine Ban Convention**, the **Convention on Cluster Munitions** and **Protocol V to the Convention on Certain Conventional Weapons on Explosive Remnants of War**. Key obligations are being met at the national level, and the number of States joining the Convention on Cluster Munitions and Protocol V has steadily increased. The ICRC, working closely with National Societies, has continued to promote the universalization and national implementation of these instruments.

The past two years have continued to illustrate the devastating consequences of the use of **explosive weapons with a wide impact area in populated areas** during contemporary conflicts. As it moves towards making recommendations to States that build on the Movement position on this issue, the ICRC is taking an evidence-based approach: documenting the humanitarian consequences; analysing the design-dependent effects of explosive weapons; and engaging in dialogue with armed forces on the basis of their policies and practices.

International discussions on the legal and ethical issues raised by **autonomous weapon systems** have advanced, with the ICRC actively contributing through the organization of a second expert meeting in 2016 and associated technical and legal analyses. Movement components should consider pressing governments to give urgency to their own analyses.

"Cyber weapons" and the hostile use of cyberspace remained topics of concern. The ICRC continues to engage in related bilateral dialogue with States, as well as in academic and public debates, and will now work to deepen its understanding of the potential human cost of cyber warfare and to explore measures to safeguard civilians and essential civilian infrastructure.

Progress on better implementation of States' obligation to carry out rigorous **legal reviews of new weapons** under Additional Protocol I (Article 36) has been slow despite the issues raised by new technologies of warfare. Sustained efforts will be needed by the ICRC and National Societies, which will be supported by an updated *Guide to the Legal Review of New Weapons, Means and Methods of Warfare*.

Chemical and biological weapons remained high on the agenda, in particular given the repeated use of chemical weapons in Syria and Iraq. The ICRC continues to urge all States and non-State armed groups to respect these absolute prohibitions, and to make the necessary preparations to assist any victims in the event of use.

1) INTRODUCTION

Resolution 7 on weapons and international humanitarian law, adopted by the 2013 Council of Delegates, calls on States and components of the Movement to take specific actions on a range of weapons of humanitarian concern.¹ It also “invites the ICRC, in cooperation with Movement partners, to report, as necessary, to the Council of Delegates on relevant developments under this Resolution”.

This is the second progress report on the implementation of Resolution 7, covering the period December 2015 to October 2017. The first progress report was submitted to the Council of Delegates in December 2015, covering the period November 2013 to November 2015.² For each weapons topic covered by the Resolution, the present report reviews the key developments, describes the activities undertaken by the Movement and highlights future opportunities and challenges.

The ICRC has submitted a separate report on the implementation of Resolutions 1 on nuclear weapons, adopted by the 2011 and 2013 Council of Delegates.

2) PROGRESS

A) RESPONSIBLE ARMS TRANSFERS

Operative paragraph 1 of Resolution 7 “calls upon States to promptly sign and ratify the Arms Trade Treaty and to adopt stringent national control systems and legislation to ensure compliance with the Treaty’s norms”.

Key developments

The **Arms Trade Treaty (ATT)** had 92 States Parties as at 31 May 2017 (up from 72 in August 2015), and a further 41 States had signed but not yet ratified the treaty. The Second and Third Conferences of the States Parties were held in Geneva in August 2016 and September 2017 respectively. The Second Conference established three working groups, respectively on universalization, implementation, and transparency and reporting.

The ICRC and National Societies have continued to raise public awareness of the human cost of poorly regulated transfers of arms and ammunition and of the importance of effective global controls on such transfers, based on respect for international humanitarian law (IHL).

Movement action 2015–2017

ICRC

The ICRC has continued to engage in bilateral discussions with States that have not yet joined the ATT to promote their accession, as well as with States Parties to encourage the treaty’s faithful implementation. The issue has been the subject of various meetings convened by the ICRC, including the regional IHL conference for East and South-East Asia in Singapore in April 2017, the regional meeting of the national IHL committees of the Americas in Costa Rica in May 2017, and the IHL review meetings co-organized by the ICRC and the Economic Community of West African States (ECOWAS) in Nigeria in June–July 2016 and June 2017.

¹ *Weapons and international humanitarian law (Resolution 7)*, Council of Delegates, CD/13/R7, 17–18 November 2013.

² *Weapons and international humanitarian law (Report on the implementation of Resolution 7 of the 2013 Council of Delegates)*, Council of Delegates, CD/15/14, 7 December 2015.

The ICRC suggested revisions to bills on the implementation of the ATT in Burkina Faso, Niger and Senegal. It briefed the national IHL committee of Papua New Guinea on the provisions of the ATT in March 2017, held a one-day seminar for Ugandan authorities in May 2017, and gave presentations at academic forums in Japan, the Philippines and Thailand. The ICRC also participated in a range of activities and meetings coordinated by States and other organizations.

The ICRC participated at high level in the Second Review Conference in August 2016 (vice-president) and the Third Review Conference in September 2017 (president).

To raise awareness of the ATT's requirements and its humanitarian underpinnings, the ICRC updated its practical guide on applying IHL criteria in arms transfer decisions³ and produced a new publication containing an overview of the ATT's requirements from a humanitarian perspective.⁴

National Societies

The **Australian Red Cross** submitted a report to the Australian national IHL committee on the 2015 workshop hosted by the ICRC and the Norwegian Red Cross on the implementation of the ATT. It asked the government to consider providing interpretive guidance on the "knowledge" element of the legislation enacted, specifically on whether it required a broad or narrow interpretation.

The **Belgian Red Cross**, through dialogue with the Ministry of Foreign Affairs and the national IHL committee, encouraged Belgium to continue to promote broad adherence to and faithful implementation of the ATT. Its efforts included promoting the pledge made by European Union (EU) Member States at the 32nd International Conference of the Red Cross and Red Crescent (International Conference) in 2015, which concerns the universalization and effective implementation of the ATT and application of the EU Common Position 2008/944/CFSP on arms export control.⁵

The **British Red Cross** has supported a variety of activities aimed at promoting the ATT within the Commonwealth countries, including: convening a seminar on IHL with the Commonwealth Secretariat; co-authoring a paper with the ICRC to be presented at meetings of senior officials of Commonwealth Justice Ministries in October 2016 and 2017; and contributing funding for the fourth meeting of representatives of Commonwealth national IHL committees in Namibia in June 2017.

The **Norwegian Red Cross** has been very involved in promoting better implementation of the ATT, co-hosting a workshop with the ICRC on the topic in Geneva on 15 September 2016. At the national level, it pressed for, and achieved through a majority decision in Parliament, a review by the Norwegian government of its arms transfer regulations in light of the ATT, including making Articles 6 and 7 of the treaty minimum legal requirements for arms transfers. The National Society also participated in debates and engaged in public communication to encourage better regulation of the arms trade in Norway.

³ ICRC, *Arms Transfer Decisions: Applying International Humanitarian Law and International Human Rights Law Criteria – A Practical Guide*, ICRC, Geneva, September 2016, <https://www.icrc.org/en/publication/0916-arms-transfer-decisions-applying-international-humanitarian-law-criteria>

⁴ ICRC, *Understanding the Arms Trade Treaty from a Humanitarian Perspective*, ICRC, Geneva, September 2016, <https://www.icrc.org/en/publication/4252-understanding-arms-trade-treaty-humanitarian-perspective>

⁵ 32nd International Conference of the Red Cross and Red Crescent, 2015, Pledge OP320040.

Future opportunities and challenges

With weapons continuing to flow into areas experiencing acute crisis, where serious violations of IHL and of human rights law are commonplace, it is crucial that ATT States Parties live up to their obligations under the treaty and faithfully implement its arms transfer criteria based on respect for IHL and human rights.

Components of the Movement should continue to urge the broad adherence of States to the ATT and the faithful implementation of its obligations, as appropriate and according to their capacities, and in line with States' duty to ensure respect for IHL. National Societies can use the above-mentioned ICRC publications in their activities to promote the ATT. A number of National Societies have already expressed their commitment to continue to monitor proper application of the treaty in their countries and to support their governments' efforts to strengthen universal accession and implementation.

The ICRC will continue to promote the ATT in its regional and national seminars on IHL, as well as during other planned events.

B) LANDMINES, CLUSTER MUNITIONS AND OTHER EXPLOSIVE REMNANTS OF WAR

Operative paragraph 2 of Resolution 7 “*requests* that all components of the Movement increase their efforts – according to their respective capacities – to implement the 2009 Movement Strategy on Landmines, Cluster Munitions and other Explosive Remnants of War, and in particular to promote the norms of international humanitarian law applicable to these weapons, to conduct activities aimed at reducing the impact of weapon contamination, and to provide victims of weapons with comprehensive assistance, and *requests* that the components of the Movement provide information on the implementation of the Movement Strategy to the ICRC for monitoring and reporting purposes, in accordance with Resolution 6 of the 2009 Council of Delegates”.

Key developments

Significant progress has been made since the 2015 Council of Delegates in implementing the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Anti-Personnel Mine Ban Convention), the Convention on Cluster Munitions and Protocol V to the Convention on Certain Conventional Weapons (CCW) on Explosive Remnants of War. The number of States joining the Convention on Cluster Munitions and Protocol V has steadily increased.

As at June 2017, the number of States party to the **Anti-Personnel Mine Ban Convention** remained at 162. Although no State has joined the treaty since 2014, in recent years a number of States, including (as reported in the last progress report) the United States of America, have begun to take steps in this direction. More recently, Sri Lanka announced in 2016 that its Council of Ministers had approved accession to the treaty, an essential step in its domestic process towards ratification. Consultations within the government are ongoing.

In 2015, the most recent year for which figures were available, approximately 158,000 anti-personnel mines were removed from the ground and some 171 square kilometres of mined area cleared. A total of 26 States party to the Anti-Personnel Mine Ban Convention have now completed their clearance requirements under the treaty, releasing land for productive use. More than 51 million stockpiled anti-personnel mines have been destroyed since the treaty entered into force. Efforts to assist victims continue, including for those who are part of broader development programmes/initiatives under the UN Convention on the Rights of Persons with Disabilities. Although the past two years have seen a rise in the number of new mine victims,

mainly due to the use of anti-personnel mines by non-State armed groups and a few non-party States, the use of these weapons remains relatively rare.

The implementation of the Anti-Personnel Mine Ban Convention is taking place in the context of the 2014–2019 Maputo Action Plan, adopted at the Third Review Conference. In this plan, States Parties affirmed their ambition to ensure that by 2025 their respective time-bound obligations under the convention were fulfilled; there would be no new anti-personnel mine victims; and mine survivors would benefit from full and equal participation in their societies.

The **Convention on Cluster Munitions** had 101 States Parties as at 15 June 2017. Three have joined the treaty since the 2015 Council of Delegates.

Overall, implementation of the Convention on Cluster Munitions has been impressive, particularly in the area of stockpile destruction. A total of 29 States Parties have now destroyed some 1.4 million stockpiled cluster munitions, six of these during the past two years. This resulted in the destruction of more than 172 million explosive submunitions representing more than 90 per cent of stockpiles reported by States Parties. Clearance of cluster munition remnants is also progressing, with seven States Parties declaring compliance with their obligations in this respect since the convention's entry into force. Thirteen other States Parties affected by cluster munition remnants are progressing towards this goal.

These activities are being carried out in the context of the Dubrovnik Action Plan, adopted by the First Review Conference of States Parties to the Convention on Cluster Munitions in 2015. This plan sets out an updated framework for implementing the convention and addressing the challenges in the areas of universalization, national implementation, clearance and victim assistance.

Protocol V to the CCW on Explosive Remnants of War now has 92 States Parties, with five States joining in the past two years. The Protocol sets out States' responsibilities in protecting civilians from the dangers posed by unexploded or abandoned ordnance that are not landmines or cluster munitions. It is an important part of the framework for addressing the problems caused by "victim-activated" weapons. States Parties meet regularly to examine issues linked to implementation of the Protocol, namely: the clearance, removal and destruction of explosive remnants of war (ERW); victim assistance; generic preventive measures, such as those related to managing ammunition stockpiles; national reporting; and cooperation.

Overall, the norms set out by the three treaties remain strong, with many States Parties condemning or expressing serious concern in response to reports that anti-personnel mines or cluster munitions have been used in current conflicts. The increased linkages between these treaties and the UN Convention on the Rights of Persons with Disabilities has enabled a more holistic approach to addressing the barriers facing those who live with disabilities and impairment.

Movement action 2015–2017

ICRC

The ICRC pursued efforts to promote the universalization and implementation of the treaties governing landmines, cluster munitions and ERW. Activities included working with National Societies to foster adherence to and implementation of the instruments and providing legal assistance to States in developing national legislation to meet their international obligations.

Landmines, cluster munitions and ERW were among the topics discussed at ICRC-organized national and regional IHL seminars. The ICRC held two workshops in Cambodia (March and

May 2016) to facilitate understanding of the requirements of the Convention on Cluster Munitions and to encourage Cambodia to consider ratification of the treaty. A national workshop was also held in Sri Lanka (January 2016) to help officials better understand the benefits and implications of joining the Anti-Personnel Mine Ban Convention. The three treaties were also presented at two regional meetings on weapons and IHL held respectively in St Petersburg for representatives of the Commonwealth of Independent States (October 2016) and in San José for Latin American States. The ICRC also updated its brochures on cluster munitions and ERW.

The ICRC participated, in most instances at the level of president or vice-president, in the annual meetings of States Parties to the Anti-Personnel Mine Ban Convention and to the Convention on Cluster Munitions. ICRC experts also attended these events, as well as meetings of States Parties to Protocol V to the CCW on Explosive Remnants of War and the Fifth Review Conference of States Parties to the CCW held in December 2016.

The ICRC undertook preventive mine-action activities in a large number of countries or contexts.⁶ These included providing government mine-action bodies with expert guidance, training and technical know-how and supporting National Societies in conducting their own such activities and/or in operating safely in a weapon-contaminated environment.

Through its physical rehabilitation programmes and the MoveAbility Foundation (formerly the Special Fund for the Disabled), the ICRC continued to strengthen national physical rehabilitation services, to improve the accessibility and quality of these services and to develop local capacities to ensure their sustainability.

In 2016, more than 398,000 people with physical disabilities (approximately 9 per cent more than in 2015), in a wide range of countries,⁷ benefited from various ICRC-supported projects, as did physical rehabilitation centres, component factories and training institutions.

In addition, the MoveAbility Foundation continued its efforts to strengthen the physical rehabilitation sectors of low- and middle-income countries in Africa, Asia and Latin America. In 2016, it supported a total of 27 government-run and private physical rehabilitation centres and 5 training institutions.

National Societies

The **Australian Red Cross** delivered public and stakeholder-specific training courses and conducted volunteer and staff inductions to promote IHL and raise awareness of its application to landmines, cluster munitions and other explosive weapons. During 2017, it focused on the ongoing issues raised by anti-personnel landmines.

The **Belgian Red Cross** carried out various activities relevant to the issue, including: regular training events for the Belgian armed forces; an annual course on IHL for government officials, journalists and lawyers; an annual field exercise with the Belgian armed forces, with a focus on anti-personnel landmines and ERW; and a module on war in cities at the March 2017 Belgian Red Cross-Flanders course on IHL. The National Society maintained regular dialogue with the government on these issues, and at meetings of the national IHL committee promoted

⁶ Including: Abkhazia, Armenia, Azerbaijan, Bosnia and Herzegovina, Cambodia, Colombia, Democratic People's Republic of Korea, Djibouti, Egypt, Ethiopia, India, Iran, Iraq, Israel and the occupied territories, Jordan, Kenya, Laos, Lebanon, Mexico, Morocco, Myanmar, Nigeria, Pakistan, Peru, Somalia, Syria, Tajikistan, Ukraine, Venezuela, Viet Nam, Western Sahara, Yemen and Zimbabwe.

⁷ Including: Afghanistan, Bangladesh, Burundi, Cambodia, Central African Republic, Chad, China, Colombia, Democratic Republic of the Congo, El Salvador, Ethiopia, Guatemala, Guinea-Bissau, Honduras, India, Iran, Israel and the occupied territories, Laos, Lebanon, Mali, Mexico, Myanmar, Nepal, Niger, Pakistan, Philippines, South Sudan, Sudan, Syria, Tunisia and Yemen.

the fulfilment of pledges made at the 32nd International Conference on implementation of IHL instruments⁸ and on the promotion and dissemination of IHL.⁹

The **Costa Rican Red Cross** supported its government's efforts to promote IHL instruments applicable to weapons, with a particular focus on landmines, cluster munitions and ERW.

The **Norwegian Red Cross** co-organized a Movement workshop in South-East Asia on victim assistance and disability inclusion in December 2016. At the national level, it urged the withdrawal of investments by a large State-owned oil company in Norway from companies that produce cluster munitions.

Future opportunities and challenges

Although significant progress has been made since the 2015 Council of Delegates, there remain a range of challenges to reducing the dangers and addressing the ongoing suffering caused by anti-personnel mines, cluster munitions and ERW. In accordance with the Movement Strategy, components of the Movement should, as appropriate, consider focusing as a priority on:

- reminding States to remain fully committed to implementing their obligations under the Anti-Personnel Mine Ban Convention, the Convention on Cluster Munitions and Protocol V to the CCW on Explosive Remnants of War, including through the mobilization of sufficient resources;
- reminding States party to the Anti-Personnel Mine Ban Convention and the Convention on Cluster Munitions to live up to the commitments they made in the 2014 Maputo and 2015 Dubrovnik action plans;
- reminding States party to the Anti-Personnel Mine Ban Convention and the Convention on Cluster Munitions that are in a position to do so of their obligations to provide assistance and cooperation to affected States in implementing these treaties;
- promoting the universalization of the above-mentioned treaties, bearing in mind that a number of States not yet party still possess substantial stockpiles of anti-personnel mines and/or cluster munitions, that there were reports of use of these weapons by some States and by non-State actors in recent years, and that ERW continue to claim high numbers of civilian victims every year.

C) EXPLOSIVE WEAPONS IN POPULATED AREAS

Operative paragraph 4 of Resolution 7 of the 2013 Council of Delegates "*calls upon* States to strengthen the protection of civilians from the indiscriminate use and effects of explosive weapons, including through the rigorous application of existing rules of international humanitarian law, and to avoid using explosive weapons with a wide impact area in densely populated areas".

The Movement's call echoes the ICRC's position on explosive weapons that "due to the significant likelihood of indiscriminate effects and despite the absence of an express legal prohibition for specific types of weapons, the ICRC considers that explosive weapons with a wide impact area should be avoided in densely populated areas".¹⁰

⁸ 32nd International Conference of the Red Cross and Red Crescent, 2015, Pledge OP320040.

⁹ 32nd International Conference of the Red Cross and Red Crescent, 2015, Pledge OP320039.

¹⁰ ICRC, *International humanitarian law and the challenges of contemporary armed conflicts*, report to the 31st International Conference of the Red Cross and Red Crescent, 31IC/11/5.1.2, ICRC, Geneva, October 2011, p. 42, <https://www.icrc.org/eng/assets/files/red-cross-crescent-movement/31st-international-conference/31-int-conference-ihl-challenges-report-11-5-1-2-en.pdf>.

Key developments

The past two years have sadly illustrated the devastating consequences of the use of explosive weapons with a wide impact area in populated areas. Ongoing armed conflicts, notably in the Middle East, have confirmed that there is a strong likelihood of indiscriminate effects when such weapons are used against military objectives located in densely populated areas. It is a major cause of civilian death and injury, and of damage to civilian homes and critical infrastructure, with consequent disruption to essential services such as health care and water distribution, and displacement of the civilian population.

The issue of explosive weapons in populated areas featured prominently in the reports of the UN Secretary-General on the protection of civilians in armed conflict in 2016 and 2017. Non-governmental organizations (NGOs), including those active under the umbrella of the International Network on Explosive Weapons, also played an important role in raising awareness of the human costs of using such weapons in populated areas. Austria is leading a diplomatic initiative to promote the adoption of a political declaration on the issue. The topic has also been raised in the context of the CCW.

Movement action 2015–2017

ICRC

The ICRC has continued to raise its concerns publicly about the consequences of the use of explosive weapons in populated areas, and to promote its position. It has been implementing a multidisciplinary strategy on this issue, involving its experts in protection, IHL, water and habitat, health, weapon contamination, armed forces and communication. Its approach is evidence-based, notably through: documentation by a select number of its field delegations of the direct and reverberating effects on civilians and civilian infrastructure of the use of explosive weapons in populated areas; analysis of the foreseeable design-dependent effects of certain explosive weapons, based on their technical characteristics; and dialogue with armed forces on relevant military policy and practice.

In late 2015, the ICRC published a report on urban services during protracted armed conflicts and, in 2016 and 2017, commissioned and published two technical analyses.¹¹ The organization presented and published its views on the issue in the context of meetings of legal experts, such as the 2015 Bruges colloquium on urban warfare and the 2016 San Remo round-table on weapons and the international rule of law. In 2016, the ICRC published a factsheet and a video of a lecture on explosive weapons in populated areas. The *International Review of the Red Cross* produced an edition on “War in cities” in 2017 containing several articles relevant to the issue and serving as a founding element of the ICRC’s 2017 conference cycle on urban warfare.

Over the last two years, the ICRC has also ensured that its key messages on explosive weapons in populated areas were clearly conveyed at events such as the Habitat III Summit in 2016, at the First Committee of the UN General Assembly, at UN Security Council debates on the protection of civilians and in other forums.

National Societies

The **Belgian Red Cross** engaged with a number of audiences on this issue, including: at the annual Frits Kalshoven competition on international humanitarian law; at the 2016 and 2017 IHL competitions for students from Belgian universities; and during public awareness-raising activities. It also included the topic during training events for the Belgian armed forces.

¹¹ All ICRC publications and documents referred to in this section are available at: www.icrc.org/ewpa.

The **German Red Cross** presented the issue at the annual conference of legal advisers of the German armed forces and the German Red Cross in Ettlingen in 2015¹² and raised the issue in public communications on ongoing conflicts, such as those in Syria and Iraq.

The **Norwegian Red Cross** continued to promote the Movement position on the use of explosive weapons in populated areas, and highlighted the political and military measures Norway should take in relation both to their own armed forces when conducting warfare in urban areas, and to Norway's position on relevant international processes. The National Society also participated in a national round-table on this issue in August 2016 aimed at developing a consolidated Norwegian understanding and mandate for engaging in associated international diplomatic processes.

Future opportunities and challenges

With hostilities increasingly being conducted in populated areas, attention to the high costs to civilians of the use of explosive weapons in such environments is likely to continue to grow in the coming years, including on international and national policy agendas.

As a priority, among other steps, the ICRC will continue to:

- document and raise awareness of the effects of the use of explosive weapons in populated areas, including their reverberating effects on essential services and on the well-being of the civilian population;
- engage in dialogue with armed forces on existing military policies and practices relevant to the use of explosive weapons that have wide area effects, to identify good practices aimed at minimizing the effects of these weapons on civilians and civilian objects;
- engage in dialogue with States and other stakeholders on the basis of the Movement's position and on the relevant IHL rules, to determine whether there is a need to clarify the interpretation of these rules as they apply to the use of explosive weapons in populated areas.

The above-mentioned actions will be supported by the publication of an ICRC report containing a series of recommendations. National Societies can continue to bolster their part in these efforts, as appropriate and according to their capacities, by raising awareness of the humanitarian consequences of the use of explosive weapons in populated areas and by encouraging their governments to adopt the Movement's position on the issue.

D) NEW TECHNOLOGIES OF WARFARE

Operative paragraph 5 of Resolution 7 of the 2013 Council of Delegates *“calls upon* States to fully consider the potential humanitarian impact of new and developing technologies of warfare, including remote-controlled, automated and autonomous weapon systems and ‘cyber weapons’, and to subject these weapons to rigorous legal reviews in accordance with the obligation set forth in Additional Protocol I (Article 36)”.*”*

¹² Stefanie Haumer and Katja Schöberl, “Anwendung militärischer Gewalt in dicht besiedelten Gebieten”, *Journal of International Law of Peace and Armed Conflict*, Vol. 28, No. 3, 2015, pp. 100–104.

I) AUTONOMOUS WEAPON SYSTEMS

Key developments

National and international debates on autonomous weapon systems have gained momentum over the past two years. The third informal CCW meeting of experts on lethal autonomous weapon systems took place in April 2016, and at the Fifth CCW Review Conference in December 2016, States established a Group of Governmental Experts, which will hold its first meeting in Geneva on 13–17 November 2017.

States have recognized that “views on appropriate human involvement with regard to lethal force and the issue of delegation of its use are of critical importance”.¹³ The ICRC, which has called for limits on autonomy in weapon systems, has urged the new Group of Governmental Experts to focus on determining the type and degree of human control necessary to satisfy legal obligations and ethical considerations. The NGO Campaign to Stop Killer Robots has continued to advocate for a ban on “fully autonomous weapon systems” – those systems without “meaningful human control” – through a new protocol to the CCW, which has gained the support of a small number of States. Most States party to the CCW have acknowledged the need to maintain human control over weapon systems and the use of force, without necessarily specifying what this implies in practice.

Movement action 2015–2017

ICRC

The ICRC has further developed its legal and policy positions on autonomous weapon systems. It convened a second international expert meeting on the issue in March 2016, bringing together 20 States and independent experts to consider the “implications of increasing autonomy in the critical functions of weapons”. The meeting focused on lessons from autonomy in existing weapons, and a report of the meeting was published in September 2016.¹⁴ The ICRC also contributed to international discussions in the context of the CCW, publishing a paper outlining its updated position at the third CCW meeting of experts on lethal autonomous weapon systems in April 2016.¹⁵

The ICRC participated in a number of other discussions on autonomous weapon systems with States – bilaterally and regionally – and with legal, military and technical experts. These included a regional meeting organized by the ICRC on new technologies of warfare in Seoul in September 2016. In preparation for the first meeting of the Group of Governmental Experts in November 2017, the ICRC has been carrying out further analysis of the legal, technical and ethical issues surrounding this topic.

National Societies

A number of National Societies have engaged with their governments on this issue, including the **Belgian Red Cross**, the **Finnish Red Cross**, the **Netherlands Red Cross**, the **Swedish Red Cross** and the **Swiss Red Cross**.

¹³ United Nations, *Recommendations to the 2016 Review Conference submitted by the Chairperson of the Informal Meeting of Experts on Lethal Autonomous Weapon Systems*, para 2(b).

¹⁴ ICRC, *Autonomous Weapon Systems: Implications of Increasing Autonomy in the Critical Functions of Weapons*, ICRC, Geneva, September 2016, <https://www.icrc.org/en/publication/4283-autonomous-weapons-systems>

¹⁵ ICRC, *Views of the ICRC on autonomous weapon systems*, Paper submitted to the Convention on Certain Conventional Weapons Meeting of Experts on Lethal Autonomous Weapons Systems (LAWS), 11 April 2016, <https://www.icrc.org/en/document/views-icrc-autonomous-weapon-system>.

The **Australian Red Cross** published an article by a member of the Australian armed forces on autonomous weapon systems in 2016,¹⁶ and supported the delivery of an IHL course at Charles Darwin University, with a session dedicated to these weapons.

Future opportunities and challenges

The challenges raised by increasing autonomy in weapon systems are becoming a pressing concern, with rapid advances in robotic weapon platforms incorporating software-controlled targeting systems. It is important, therefore, that all the components of the Movement, as appropriate and according to their capacities, impress on governments the urgency of the work of the Group of Governmental Experts.

As virtually all CCW States Parties have acknowledged the need to maintain human control over weapon systems and the use of force, the Group of Governmental Experts should consider the practical elements of human control that flow from both legal and ethical considerations. In the view of the ICRC, the Group of Governmental Experts should place the human-machine relationship at the forefront of discussions, drawing on a realistic assessment of technology that incorporates the legal, technical and operational lessons from existing autonomous weapon systems.

As the use of **remote-controlled weapons (particularly armed “drones”)** by States and non-State armed groups grows, the ICRC will continue to take part in relevant legal debates. With the increasing focus on robotic weapon platforms in the air, on land and at sea, it is important to continue to monitor their humanitarian consequences.

II) CYBER WEAPONS

Key developments

The hostile use of cyberspace is an ever-increasing concern for the security of governments, individuals, businesses and the media. It includes the development of offensive military cyber capabilities by States and the growing risk of cyber attacks in armed conflict. Indeed, the period under review saw the first publicly reported use of cyber operations against essential infrastructure in a situation of armed conflict, which led to a power outage. It also saw an increase in cyber attacks on private and public networks in peacetime situations, temporarily disrupting these networks.

While to date cyber warfare has not had major consequences in humanitarian terms, cyber attacks on transportation systems, power networks, dams and chemical or nuclear facilities have the potential to cause many civilian casualties and/or severe damage to civilian objects. For this reason, increasing international attention should be paid to ensuring that the limits imposed by IHL on the conduct of hostilities to protect the civilian population are applied and respected in cyberspace. Efforts to advance discussion on these issues at the multilateral level have faced challenges, notably at the UN Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security.

Movement action 2015–2017

The ICRC presented an expanded reading of the challenges that cyber warfare poses for the interpretation and application of IHL in its report on IHL and the challenges of contemporary

¹⁶ Damian Copeland, “Business, IHL and ‘killer robots’”, *International Humanitarian Law magazine*, No. 1, 2016.

armed conflicts presented to the 32nd International Conference in 2015.¹⁷ On this basis, the ICRC continued to engage in academic and public debates and in bilateral and multilateral dialogue with States to better understand this new technology of warfare and its potential human cost, and draw the attention of States and other parties to armed conflict to the importance of upholding in cyberspace the protection that IHL affords civilians. This included participation in two workshops convened by the United Nations Institute for Disarmament Research (UNIDIR) with States involved in the UN Group of Governmental Experts.

Future opportunities and challenges

In the coming years, with a view to further informing legal and policy debates, the ICRC will centre its discussions with States and other relevant stakeholders on:

- developing a greater understanding of the potential human cost of cyber warfare;
- clarifying how IHL applies in cyberspace, including what constitutes a cyber attack for the purpose of applying IHL rules on the protection of the civilian population;
- measures to safeguard essential civilian infrastructure from the effects of cyber attacks;
- the importance of, and challenges raised by, the legal review of cyber weapons.

III) LEGAL REVIEW OF NEW WEAPONS

Key developments

Each State party to Additional Protocol I (AP I) is required by Article 36 to determine whether the use of any new weapon, means or method of warfare that it develops or acquires would, in some or all circumstances, be prohibited by international law. Even for States not party to AP I, legal reviews are a policy necessity since they are critical to ensuring that their armed forces are capable of conducting hostilities in accordance with their international obligations.

Ongoing discussions about new technologies of warfare, particularly autonomous weapon systems and cyber weapons, have kept attention on improving implementation of Article 36 and on considering any new issues these technologies raise for legal review.

Movement action 2015–2017

ICRC

The ICRC has continued to emphasize the Article 36 obligation, especially in the context of the CCW, and to urge States that have not already done so to establish standing procedures to carry out rigorous and multidisciplinary reviews. It also engaged in dialogue with a number of States regarding their policy and practice on weapons review, linked to the ongoing update of its 2006 *Guide to the Legal Review of New Weapons, Means and Methods of Warfare*, which will also address challenges posed by new technologies of warfare.

The ICRC presented its views on the topic at a range of meetings, including: the April 2016 informal meeting of experts on autonomous weapon systems; the San Remo round-table on weapons and the international rule of law in September 2016; and the annual Article 36 weapons review forum organized by the UK Ministry of Defence in October 2016.

¹⁷ ICRC, *International humanitarian law and the challenges of contemporary armed conflicts*, report to the 32nd International Conference of the Red Cross and Red Crescent, 32IC/15/11, ICRC, Geneva, October 2015, pp. 39–44, <https://www.icrc.org/en/download/file/15061/32ic-report-on-ihl-and-challenges-of-armed-conflicts.pdf>.

National Societies

The **British Red Cross** made a joint pledge with the United Kingdom at the 32nd International Conference in 2015 to promote the establishment of effective weapons review mechanisms and encourage the sharing of best practice, in particular relating to new technologies of warfare.

The **Danish Red Cross** was requested by the Danish Ministry of Defence to advise on a model Article 36 weapons review procedure. To this end, the National Society is co-organizing a symposium with the **Finnish Red Cross**, involving participants from Switzerland, Sweden, the United Kingdom and the ICRC. The aim of the symposium is to foster an exchange between Nordic authorities and experienced representatives of States that have an existing Article 36 procedure.

The **German Red Cross** pursued a dialogue with the authorities on weapons issues, especially within the national IHL committee, sharing the Movement's position on Germany's Article 36 review procedure.

The **Norwegian Red Cross** urged more rigorous implementation of Article 36 in Norway, including a specific focus on issues raised by autonomous weapon systems. The Norwegian government is currently redefining and improving its Article 36 review as part of the process of acquisition of weapons for the Norwegian armed forces.

Future opportunities and challenges

The challenge remains to improve implementation of Article 36, with only a small number of States so far having established standing mechanisms to assess the legality of new weapons. The continued spotlight on new technologies of warfare provides an opportunity for components of the Movement to recall this obligation, including the past commitments of States made at International Conferences, and to give practical guidance on how States may meet it.

The ICRC will continue to engage with States, bilaterally and in multilateral forums such as CCW review conferences, and to foster exchanges of experiences on weapons review mechanisms and procedures. National Societies should, as appropriate and according to their capacities, urge their governments to establish weapons review procedures or mechanisms where they do not yet exist. The ICRC will update its *Guide to the Legal Review of New Weapons, Means and Methods of Warfare*, which will provide a valuable tool for States seeking to establish such procedures.

E) CHEMICAL AND BIOLOGICAL WEAPONS

Operative paragraph 6 of Resolution 7 of the 2013 Council of Delegates “*calls upon* States to uphold the prohibition of chemical and biological weapons, including by adhering to and ensuring the faithful implementation of the relevant treaties, observing customary international humanitarian law, monitoring developments in science and technology that have the potential for misuse, and acting to prevent the re-emergence of chemical and biological weapons and their use”.

Key developments

Although the **Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons Convention)** is almost universal, with 192 States Parties, and the use of chemical weapons is absolutely prohibited in customary IHL applicable to all parties to armed conflict, use of such

weapons has persisted in Syria (as confirmed by the Fact-Finding Mission of the Organisation for the Prohibition of Chemical Weapons (OPCW)) and in Iraq.

In Iraq, in early March 2017, ICRC medical teams working at the West Erbil Emergency Hospital helped treat seven victims of chemical weapons from fighting around Mosul, whose symptoms were consistent with exposure to blister agents.¹⁸

In relation to separate concerns about the development and use of highly toxic chemicals as weapons for law enforcement, a joint Australian-Swiss initiative has succeeded in gaining the support of 36 States on the issue of the aerosolization of central nervous system-acting chemicals for law-enforcement purposes. The initiative calls for discussion among States party to the Chemical Weapons Convention to prevent the re-emergence of chemical weapons.¹⁹

The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (Biological Weapons Convention) now has 178 States Parties, with Angola, Côte d'Ivoire, Guinea, Liberia and Nepal having joined the treaty during the past two years. The norm prohibiting the use of biological weapons, which is also part of customary IHL, remains strong. There have been no reports of the use of biological weapons. However, naturally occurring infectious disease outbreaks, such as the Ebola outbreak in Guinea, Liberia and Sierra Leone between 2014 and 2016, which infected at least 28,646 people and killed 11,323,²⁰ have illustrated the potential consequences of the deliberate spread of disease and highlighted the fragility of international response mechanisms for global health emergencies.

The 8th Review Conference of the Biological Weapons Convention took place in Geneva on 7–25 November 2016, but produced only a very limited review of the convention and its articles. It furthermore failed to agree a future programme of intersessional work for 2017–2020 to strengthen the treaty's implementation.

Movement action 2015–2017

ICRC

The ICRC strongly condemned the use of chemical weapons in Iraq and Syria, in multilateral forums, including at the Conferences of the States Parties to the Chemical Weapons Convention in December 2015 and December 2016, and in other public communications, including in response to the recent use of chemical weapons in Iraq and Syria. It has regularly reiterated the absolute prohibition on the use of chemical weapons, both publicly and in bilateral communications with States.

Meanwhile, the ICRC has continued to promote its position – notably at the annual meetings of States Parties to the Chemical Weapons Convention and during policy and legal discussions convened by States – that the use of toxic chemicals as weapons for law enforcement should be limited to riot-control agents only.

The ICRC participated in the Preparatory Committee and Review Conference of the Biological Weapons Convention in 2016, underlining the need: to develop effective means to monitor and assess compliance; to increase preparedness to help victims should biological weapons be used; to effectively assess the implications of advances in science and technology; and to keep

¹⁸ ICRC, *ICRC strongly condemns use of chemical weapons around Mosul*, News release, 3 March 2017, <https://www.icrc.org/en/document/iraq-icrc-strongly-condemns-use-chemical-weapons-around-mosul>

¹⁹ Organisation for the Prohibition of Chemical Weapons, *Aerosolisation of central nervous system-acting chemicals for law enforcement purposes*, C-21/NAT.3/Rev.3, 2 December 2016.

²⁰ World Health Organization, *Ebola Situation Reports* (data up to 27 March 2016), <http://apps.who.int/ebola/ebola-situation-reports>

up efforts to promote the universalization and national implementation of the treaty. It also produced a video animation to raise wider public awareness of the risks.²¹

In particular, the ICRC has contributed to the analysis of the lessons from the naturally occurring Ebola outbreak for any humanitarian response to the use of biological weapons, with the aim of limiting the adverse consequences of such use.²² The ICRC also worked to promote the national implementation of the Chemical and Biological Weapons Conventions, including convening a regional drafting workshop on the Biological Weapons Convention in Sri Lanka in October 2016.

National Societies

A number of National Societies have been active in this area. For example, the **Australian Red Cross** published an online opinion piece on the illegality of chemical weapons under IHL. The **Belgian Red Cross** includes these prohibitions in its IHL awareness-raising activities, has carried out public communications to reinforce knowledge of the prohibition of chemical weapons, and briefed the Belgian Ministry of Foreign Affairs on the ICRC's positions on the 8th Review Conference of the Biological Weapons Convention. The **German Red Cross** addressed chemical and biological weapons issues within the German national IHL committee.

Future opportunities and challenges

The ICRC will continue to engage bilaterally and in multilateral forums to urge States and parties to armed conflicts to respect the absolute prohibitions of chemical and biological weapons, and to build the support of States for its position on the use of toxic chemicals as weapons for law enforcement. The ICRC will also seek to contribute to efforts to strengthen implementation of the Biological Weapons Convention.

4) CONCLUSION

Progress has been made on the full range of weapons issues covered by Resolution 7 over the past two years, backed by the various initiatives of the ICRC and National Societies.

The ICRC will continue to devote resources to these issues, with a focus on improving implementation of and respect for existing prohibitions and restrictions on weapons of humanitarian concern, and on influencing discussion of the legal and humanitarian implications of new and emerging technologies of warfare. It will continue to support National Societies in their activities to promote the Movement's positions, with particular emphasis on implementation of the Movement Strategy on Landmines, Cluster Munitions and other Explosive Remnants of War, and on promotion of the ATT.

²¹ ICRC, *How real is the threat of biological weapons today?* (animation), updated 15 March 2017, <https://www.icrc.org/en/document/how-real-threat-biological-weapons-today>

²² ICRC, *Humanitarian response to the use of biological weapons: Lessons from the naturally occurring Ebola outbreak of 2014–2016*, Paper submitted to the Preparatory Committee for the Eighth Review Conference of the States Parties to the Biological Weapons Convention, ICRC, Geneva, August 2016, https://www.icrc.org/en/download/file/26184/humanitarian_response_to_bw_lessons_from_ebola_icrc_8.8.16.pdf