

Power of humanity

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

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

Geneva, Switzerland

8 December 2019

**Weapons and International Humanitarian Law
(Resolution 7 of the 2013 Council of Delegates)**

Progress report

**Document prepared by
the International Committee of the Red Cross**

Geneva, October 2019

EXECUTIVE SUMMARY

Resolution 7 of the 2013 Council of Delegates commits the International Red Cross and Red Crescent Movement (the Movement) to specific actions to address the humanitarian impact of certain weapons. The Resolution invited the International Committee of the Red Cross (ICRC), in cooperation with other components of the Movement, to report to the Council of Delegates on its implementation. This third progress report covers the period from November 2017 to November 2019. It summarizes the key developments, reviews actions taken by the ICRC and National Red Cross and Red Crescent Societies (National Societies) and highlights future opportunities and challenges.

Efforts to promote **responsible arms transfers** gathered momentum, with the ICRC and National Societies continuing to press for the adoption of effective controls on arms transfers, although challenges in ensuring high standards in the international arms trade remain.

There has been notable 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 (CCW) on Explosive Remnants of War**. Key obligations, such as risk education, clearance and victim assistance, are progressively 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 see the devastating consequences of the use in contemporary armed conflicts of **explosive weapons with a wide impact area in populated areas**. The ICRC maintained its dialogue on the issue with States and armed forces to identify good practices for reducing the risk posed to civilians by the use of such weapons.

International discussions on **autonomous weapon systems** have advanced, with States now agreeing that human control – or “responsibility” – must be retained over weapons and the use of force. The ICRC continued to expand its analysis of the legal, ethical, technical and operational issues, offering proposals to States on how best to develop limits on autonomy in weapon systems in order to mitigate the risks and ensure compliance with international humanitarian law (IHL) and ethical acceptability.

“**Cyber weapons**” and their potential consequences remained topics of concern. The ICRC continued to engage in bilateral and multilateral dialogue with States on the issue and to participate in academic and public debates. It deepened its understanding of the potential human cost of cyber warfare and clarified notably that cyber tools are capable of being used in compliance with IHL.

Discussions in international forums on new technologies of warfare provided an opportunity to highlight the importance of **reviewing the legality of new means and methods of warfare**. But challenges remain and demand the sustained efforts of the ICRC and National Societies to ensure rigorous legal reviews by States, 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 international agenda, in particular given the repeated use of chemical weapons in Syria and Iraq, as well as the use of nerve agents to poison individuals in isolated incidents in Malaysia and the United Kingdom. The ICRC continued 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 humanitarian concerns related to the development, use and availability of weapons.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”.²

This is the third progress report on the implementation of Resolution 7, covering the period from November 2017 to November 2019. The first progress report was submitted to the 2015 Council of Delegates, covering the period from November 2013 to November 2015,³ and the second to the 2017 Council of Delegates, covering the period from December 2015 to October 2017. 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 to the 2019 Council of Delegates on the implementation of Resolution 4 on nuclear weapons, adopted by the 2017 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 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 IHL.

Movement action 2017–2019

ICRC

The ICRC continued to promote States’ accession to the Arms Trade Treaty (ATT) and to encourage its faithful implementation, including at meetings convened by the ICRC, such as the 2nd Pacific Islands Roundtable on International Humanitarian Law held in Samoa in May 2019, the Sixth Regional Seminar on IHL Implementation for CIS States held in Belarus in November 2017 and the regional IHL conference in Asia-Pacific held in Indonesia in September 2018. The ICRC also organized a two-day seminar on

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

² *Ibid.* para. 7.

³ *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.

weapons laws and the ATT in Ethiopia in April 2018 and an event on the ATT and the Nairobi Protocol⁴ in Kenya in June 2018, attended by East African government officials.

The ICRC provided input to processes addressing ATT implementation in Canada, France, Switzerland and the European Union. It gave experts from Tajikistan's National Centre of Legislation support in conducting and publishing a study on the national implementation of arms transfers in light of the ATT.

The ICRC also took the opportunity of the Third Review Conference of the UN Programme of Action on Small Arms and Light Weapons held in New York in June 2018 to promote high standards in the international arms trade, and contributed to the debate at the UN Security Council on "Silencing the Guns in Africa" in February 2019.

High-level ICRC officials participated in the Fourth Conference of States Parties to the ATT (CSP4) in Tokyo in August 2018 (director of international law and policy) and in the Fifth Conference (CSP5) in Geneva in August 2019 (vice-president). The ICRC also took part in public events in Geneva and New York to mark the treaty's 100-State-Party milestone. It furthermore produced a working paper to assist States in assessing the risk of exported arms being used to commit or facilitate serious acts of gender-based violence that amount to serious violations of IHL (a theme of CSP5).

National Societies

The **Belgian Red Cross**, the **Canadian Red Cross** and the **Swedish Red Cross** held bilateral meetings with their respective national authorities to promote the faithful implementation of the ATT. The **Norwegian Red Cross** worked with the ICRC to encourage greater involvement of National Societies from major arms-exporting countries in promoting effective implementation of the treaty.

Future opportunities and challenges

With weapons continuing to flow into areas where serious violations of IHL are commonplace, the ICRC is concerned about the gap between the duty to ensure respect for IHL in arms transfers and the actual transfer practices of too many States. This threatens the credibility of arms-transfer control regimes such as the ATT.

The ICRC and National Societies, as appropriate and according to their capacities, should continue to urge the broad adherence of States to the ATT and the faithful implementation of its obligations, in line with States' duty to ensure respect for IHL. This includes working together to monitor proper application of the treaty, to deepen their understanding of States' arms-transfer practices and to support authorities' efforts to universalize and strengthen implementation of the treaty.

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

⁴ The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, Nairobi, 21 April 2004.

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

As at June 2019, the number of States party to the **Anti-Personnel Mine Ban Convention** had reached 164. Two have joined the treaty since the 2017 Council of Delegates. Achievements include: new use of anti-personnel mines by States, even those not yet party, is rare; the international trade in anti-personnel mines has virtually ceased; more than 52 million stockpiled anti-personnel mines have been destroyed; the annual rate of new mine casualties has declined significantly over the last two decades; each year, humanitarian mine-clearance operations are clearing several hundred square kilometres of land; and efforts to assist victims continue apace.

In the 2014–2019 Maputo Action Plan adopted at the Third Review Conference of the Anti-Personnel Mine Ban Convention in June 2014, States Parties affirmed their ambition to achieve a world free of anti-personnel mines by 2025. A new Action Plan to guide the implementation of the Convention for the next five years will be adopted at the Fourth Review Conference taking place in Oslo in November 2019.

The **Convention on Cluster Munitions** had 106 States Parties as at June 2019. Four have joined the treaty since the 2017 Council of Delegates. The Convention celebrated the tenth anniversary of its adoption in 2018. Overall, implementation of the Convention has been impressive: nearly 1.5 million cluster munitions and over 175 million submunitions in States’ arsenals have been destroyed; 18 States have ceased manufacturing cluster munitions; more than 400 km² of contaminated land has been cleared of cluster munition remnants; and there has been no reported or alleged use of cluster munitions by any State Party since the Convention’s entry into force. These activities are being carried out in the context of the Dubrovnik Action Plan, adopted by the First Review Conference of the Convention on Cluster Munitions in 2015. The 2020 Review Conference is expected to adopt a new action plan.

As at June 2019, **Protocol V to the CCW on Explosive Remnants of War** had 95 States Parties, with three 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, booby traps or other devices in the meaning of Amended Protocol II to the CCW. States Parties meet regularly to examine issues linked to implementation of the Protocol. In the past two years, discussions at these meetings have focused on the challenges of clearing explosive remnants of war (ERW) in urban environments and on good practices in recording, retaining and transmitting information on the use and abandonment of ERW, to facilitate marking and clearance.

Movement action 2017–2019

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 these 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. A regional seminar on landmines, cluster

munitions and ERW took place in Vientiane in April 2019, with the participation of seven South-East Asian States. Four national workshops were also held respectively in Ethiopia (February 2018), Angola (July 2018), Sri Lanka (January 2019) and Mongolia (February 2019). The three treaties were also presented at two regional meetings on weapons and IHL held respectively in Jakarta for South-East Asian States (September 2018) and in Kigali for Commonwealth States (June 2019). The ICRC also published factsheets on the Anti-Personnel Mine Ban Convention to mark the 20th anniversary of its adoption in 2017 and on the Convention on Cluster Munitions to mark the 10th anniversary of its adoption in 2018.

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.

The ICRC undertook preventive activities in a large number of countries or contexts. It also pursued initiatives to address the threat posed by weapon contamination in 51 contexts in 2018, both through its own projects and by providing technical and financial support for National Society activities, including training in risk awareness and safer behaviour, data collection and information management.

Through its physical rehabilitation programmes and the MoveAbility Foundation, 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 2018, around 457,000 people⁵ with physical disabilities benefited from 189 projects supported by the ICRC. In addition, the MoveAbility Foundation contributed to the provision of services for 35,421 people with physical disabilities through a total of 32 projects in 14 countries.

National Societies

The **Belgian Red Cross** carried out a range of activities and events in relation to anti-personnel mines, cluster munitions and ERW, including delivering presentations for military audiences and raising these themes in introductory IHL seminars organized by the National Society. It also maintained a regular dialogue with the government on these issues.

The **Colombian** and **Spanish Red Cross** worked together to deliver mine-risk education in Colombia. The **Spanish Red Cross** also undertook various other mine-related activities. In particular, in 2017 it published a book on IHL (*Derecho internacional humanitario*⁶), which includes an extensive chapter on anti-personnel mines and cluster munitions. The **Costa Rican Red Cross** supported its government's efforts to promote IHL instruments applicable to weapons, with emphasis on landmines, cluster munitions and ERW.

The **Serbian Red Cross** covered the issues of landmines and cluster munitions in its workshops on IHL organized for various target groups.

⁵ Beneficiary figures for physical rehabilitation projects are derived from aggregated monthly data, which include repeat beneficiaries.

⁶ José Luis Rodríguez Villasante and Joaquín López Sánchez (eds), *Derecho Internacional Humanitario*, 3rd edition, Tirant lo Blanch, 2017.

Future opportunities and challenges

Despite the progress made since the 2017 Council of Delegates, there remain a range of challenges in reducing the dangers of anti-personnel mines, cluster munitions and ERW and addressing the ongoing suffering they cause. In accordance with the Movement Strategy, components of the Movement should, as appropriate, consider focusing as a priority on:

- ensuring States continue to faithfully implement their obligations under the Anti-Personnel Mine Ban Convention, the Convention on Cluster Munitions and Protocol V to the CCW, including through the mobilization of sufficient resources;
- encouraging 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 2015 Dubrovnik and 2019 Oslo action plans;
- ensuring States party to the Anti-Personnel Mine Ban Convention and the Convention on Cluster Munitions that are in a position to do so provide assistance and cooperation to affected States in implementing these treaties;
- promoting the universalization of the three 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 armed groups 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”.⁷

Key developments

Interest in this issue is increasing within the international community (UN, States, civil society). A growing number of States have recognized the grave humanitarian impact of heavy explosive weapons when used in populated areas and stressed the need for urgent action to reduce such risk. To this end, several initiatives are currently under way.

Austria continued to lead efforts to promote the adoption of a political declaration addressing the problem, including by hosting an international conference in Vienna in October 2019. Germany organized a series of meetings (“EWIPA Talks”) in the context of the CCW in Geneva in March, June and September 2018, to raise awareness, foster further dialogue and facilitate the exchange of good practices.

Two regional conferences on the protection of civilians from the use of explosive weapons in populated areas were held in Maputo in November 2017 and in Santiago de Chile in December 2018, where 21 African States and 23 Latin American and Caribbean States respectively adopted joint communiqués recognizing, *inter alia*, the need to avoid the use of explosive weapons with a wide impact area in populated areas. In May 2018, the UN Secretary-General launched an Agenda for Disarmament, which includes a

⁷ The ICRC has held this position since 2011: see 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-intconference-ihl-challenges-report-11-5-1-2-en.pdf>, all web addresses accessed July 2019.

strong call on States to take action to reduce civilian harm from the use of explosive weapons with a wide impact area in populated areas. In October 2018, in the UN General Assembly First Committee, 50 States issued a joint statement expressing concern over the civilian harm caused by the use of heavy explosive weapons in populated areas. The Foreign Affairs Committees of the German (March 2019) and French (June 2019) Parliaments held hearings on the protection of civilians from the use of explosive weapons in populated areas. The German Red Cross was invited to make an expert intervention in the former hearing, while the ICRC addressed the latter.

Movement action 2017–2019

ICRC

At the 2017 Council of Delegates, the ICRC and the Norwegian Red Cross organized a workshop on explosive weapons in populated areas.

The ICRC continued to call on States and parties to armed conflict to avoid, as a matter of policy, the use of explosive weapons with a wide impact area in populated areas. The organization recommended that this “avoidance policy” be operationalized through concrete measures and guidance (policies and practices) to be put in place well in advance of military operations and implemented whenever hostilities are conducted in populated areas. It reiterated this call in a number of high-level statements, including at meetings of High Contracting Parties to the CCW, in the UN General Assembly First Committee and during the UN Security Council open debate on the protection of civilians in armed conflict.

The ICRC continued to work with States and armed forces to identify good practices for reducing the risk of civilian harm from the use of explosive weapons in populated areas.

In addition, the ICRC organized, co-organized or participated in a number of meetings and events on the use of explosive weapons in populated areas, including an international conference on the “Protection of Civilians and Critical Infrastructure in Urban Combat Operations”, held in Lviv (Ukraine) in September 2018, and an international conference on “War in Cities: Searching for practical solutions to the contemporary challenges” in Brussels in April 2019. In 2018, the ICRC provided expert support to the “EWIPA Talks” organized by Germany in Geneva. It also participated actively in the regional conferences in Maputo and Santiago de Chile.

In 2019, the ICRC published a comprehensive report on explosive weapons in populated areas. The report features observations and conclusions from the ICRC’s work in the field, legal and military/technical analysis and highlights of its ongoing dialogue with States and parties to conflict, armed forces and military experts. The report also contains a list of recommendations on “mitigation measures” aimed at implementing an “avoidance policy” and at reducing the risk of civilian harm from the use of explosive weapons in populated areas.

National Societies

The **Belgian Red Cross** engaged in a bilateral dialogue with national authorities on explosive weapons in populated areas, and emphasized the issue in a presentation on urban warfare during an introductory seminar on IHL co-organized with the ICRC and NOHA-UCL⁸ in January 2019. The **Canadian Red Cross** hosted a webinar on explosive weapons in populated areas, focusing on operational, legal and humanitarian issues, and addressed the issue in regular training sessions with the Canadian armed forces.

⁸ Network on Humanitarian Action (NOHA); Université catholique de Louvain (UCL).

The **German Red Cross** discussed the topic with the German authorities on several occasions. Notably, the National Society was invited as an expert witness to participate in a hearing held by the German Parliament on the effects of the use of explosive weapons in populated areas. The **Spanish Red Cross** highlighted the humanitarian and legal implications of the use of these weapons when conducting IHL training and awareness-raising activities for members of the Spanish armed forces. The **Norwegian Red Cross** drafted proposals on how to further address the concerns expressed within the broader framework of “war in cities”, including with regard to the use of explosive weapons.

Future opportunities and challenges

War in cities and other populated areas using explosive weapons with a wide impact area continues to have severe humanitarian consequences. While military thinking is progressively evolving towards adapting doctrine, training and equipment to the specific challenges of fighting in populated areas, more needs to be done in this direction, and urgently.

National Societies play a key role in assisting victims of explosive weapons in populated areas and in responding to the humanitarian consequences of their use. They should make known their experiences and, together with other components of the Movement, continue to raise awareness of the humanitarian consequences. The Movement’s involvement in encouraging States to implement an “avoidance policy” and in promoting the ICRC’s good practice recommendations among governments, armed forces and parties to armed conflict will remain crucial.

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)”.

I) AUTONOMOUS WEAPON SYSTEMS

Key developments

The CCW Group of Governmental Experts (GGE) continued its deliberations on autonomous weapon systems, adopting guiding principles in 2018 that emphasize the applicability of IHL, the relevance of ethical considerations and the importance of retaining human control – or “human responsibility” – over weapon systems and the use of force.⁹ There remain different views among States on the appropriate policy response, whether it be the negotiation of new law, agreement on a political declaration or the sharing of best practice on the application of existing IHL rules.

⁹ CCW GGE, *Report of the 2018 session of the Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons Systems*, CCW/GGE.1/2018/3, October 2018: <http://undocs.org/en/CCW/GGE.1/2018/3>.

Movement action 2017–2019

ICRC

The ICRC continued to call on States to establish internationally agreed limits on autonomy in weapon systems, based on a requirement for human control. It further refined its analysis of key legal,¹⁰ military, ethical¹¹ and technical¹² issues and advocated for States to identify the practical elements of human control necessary to ensure compliance with IHL and ethical acceptability.¹³ The ICRC has also called for a human-centred approach to the use of artificial intelligence and machine learning in armed conflict, whether in relation to autonomous weapon systems or other applications, such as cyber and information warfare, and in other decision-making that has serious consequences for people's lives.¹⁴

National Societies

The **Belgian Red Cross**, the **Norwegian Red Cross** and the **Swiss Red Cross** continued to raise the issue of autonomous weapon systems with their governments. In March 2019, the **Canadian Red Cross** hosted a conference on the topic, and the **German Red Cross** participated in various conferences, workshops and roundtables addressing control of emerging technologies. The **Korean Red Cross** also hosted several events on the issue of autonomous weapon systems and published a number of associated articles in the *Korean Journal of International Humanitarian Law*.

Future opportunities and challenges

While the deliberations of the CCW GGE continue, developments in military technology are advancing rapidly. The ICRC's primary concern is a loss of human control over the use of force, which brings potential risks for civilians and raises legal questions and ethical concerns. It is important that all the components of the Movement, as appropriate and according to their capacities, impress on governments the urgency of the work to ensure that human control over weapons and the use of force is retained. Having agreed on the importance of the "human element", States must now move quickly to determine what this means in practice for internationally agreed limits on autonomy in weapon systems.

¹⁰ Neil Davison/ICRC, "A legal perspective: Autonomous weapon systems under international humanitarian law", in United Nations Office for Disarmament Affairs, *Perspectives on Lethal Autonomous Weapons Systems*, UNODA Occasional Papers No. 30, United Nations, New York, November 2017, pp. 5–18: <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2017/11/op30.pdf>.

¹¹ ICRC, "Ethics and autonomous weapon systems: An ethical basis for human control?", working paper, April 2018:

<https://www.icrc.org/en/document/ethics-and-autonomous-weapon-systems-ethical-basis-human-control>.

¹² ICRC, *Autonomy, artificial intelligence and robotics: Technical aspects of human control*, Expert meeting report, August 2019 : <https://www.icrc.org/en/document/autonomy-artificial-intelligence-and-robotics-technical-aspects-human-control>.

¹³ ICRC Statement before the CCW GGE, March 2019:

[https://www.unog.ch/80256ee600585943.nsf/\(httpPages\)/5c00ff8e35b6466dc125839b003b62a1?OpenDocument&ExpandSection=7#_Section7](https://www.unog.ch/80256ee600585943.nsf/(httpPages)/5c00ff8e35b6466dc125839b003b62a1?OpenDocument&ExpandSection=7#_Section7), and ICRC, "The Element of Human Control", working paper submitted to the meeting of High Contracting Parties to the CCW, CCW/MSP/2018/WP.3, November 2018: [https://www.unog.ch/80256EDD006B8954/\(httpAssets\)/810B2543E1B5283BC125834A005EF8E3/\\$file/CW_MSP_2018_WP3.pdf](https://www.unog.ch/80256EDD006B8954/(httpAssets)/810B2543E1B5283BC125834A005EF8E3/$file/CW_MSP_2018_WP3.pdf).

¹⁴ ICRC, "Artificial intelligence and machine learning in armed conflict: A human-centred approach", report, June 2019: <https://www.icrc.org/en/document/artificial-intelligence-and-machine-learning-armed-conflict-human-centred-approach>.

II) CYBER WEAPONS

Key developments

Only a few States have so far publicly acknowledged that they use cyber operations during armed conflicts. However, with an increasing number of States developing military cyber capabilities, their use is likely to increase.

To address challenges relating to cyber and information technology and international security, the UN General Assembly established an Open-ended Working Group and a Group of Governmental Experts in December 2018. Both working groups will convene four times in the period 2019–2021.

Movement action 2017–2019

ICRC

While appreciating the increasing recognition by States and international organizations that IHL applies to cyber warfare, the ICRC continued to raise the issue bilaterally and in multilateral forums. It also pursued a dialogue with national authorities, regional organizations, international organizations, academia and the private sector, and taken part in public debates on how IHL applies in cyber warfare and whether it does so adequately and sufficiently or requires further development, building on existing law. The ICRC seeks to ensure that legal, technical, military and humanitarian considerations are reflected in these discussions. To develop a realistic assessment of cyber capabilities and their potential humanitarian consequences in light of their technical characteristics, the ICRC hosted an expert meeting in November 2018 on the potential human cost of cyber operations.¹⁵ It also intensified its contacts with armed forces on the use of cyber operations in armed conflict.

National Societies

The **Canadian Red Cross** hosted a conference on cyber warfare in March 2019. The **German Red Cross** participated in various conferences, workshops and roundtables addressing the control of (emerging) technologies, including cyber instruments. The **Spanish Red Cross** gave a presentation on the Tallinn Manual 2.0¹⁶ at the National Defence Higher Education Centre in 2018. The **Korean Red Cross** hosted a seminar for academics and military officials in February 2019, which included a discussion on new technologies, new weapons and cyber warfare from the perspective of IHL.

Future opportunities and challenges

Given the prominence of hostile cyber operations in governmental and public debate, and the potential human cost of cyber operations, it will be crucial for the Movement to impress upon States and the public the importance of IHL norms in regulating the use of cyber means in armed conflict.

Cyber security, including the use of military cyber operations, will remain high on the international agenda. Important discussions on the topic are taking place among States in the Open-ended Working Group and the Group of Governmental Experts. In the ICRC's view, rapid technological developments also necessitate more reflection and

¹⁵ See ICRC, *The Potential Human Cost of Cyber Operations*, Expert meeting report, ICRC, Geneva, May 2019: <https://www.icrc.org/en/download/file/96008/the-potential-human-cost-of-cyber-operations.pdf>.

¹⁶ Michael N. Schmitt and Liis Vihu (eds), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Warfare*, 2nd edition, Cambridge University Press, 2017.

discussion on the question of how IHL applies to cyber warfare. In the coming years, the ICRC will continue to monitor the evolution of cyber operations, in particular in the context of armed conflicts, and assess their potential human cost. It will explore avenues for reducing that human cost and work towards an international consensus on the interpretation of existing IHL rules in relation to the issue and potentially the development of complementary rules that afford effective protection for civilians.

III) LEGAL REVIEW OF NEW WEAPONS

Key developments

Each State party to Additional Protocol I to the Geneva Conventions 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. Legal reviews are a critical measure to ensure that a State's armed forces can conduct hostilities in accordance with their international obligations, and flows from the obligation to ensure respect for IHL under common Article 1 of the Geneva Conventions.

Ongoing discussions among States about new technologies of warfare, particularly in the CCW GGE on autonomous weapon systems, have underlined the importance of robust legal reviews and provided an opportunity to discuss the challenges of reviewing the legality of new technologies.

Movement action 2017–2019

ICRC

The ICRC continued to emphasize the importance of rigorous and multidisciplinary standing legal review mechanisms, especially in the context of the CCW GGE on autonomous weapon systems. It has also engaged in dialogue with a number of States regarding their policies and practices in relation to weapons review.

The ICRC shared its views on this topic at the meeting of the CCW GGE in August 2018 and at a workshop on artificial intelligence and IHL co-hosted by the ICRC at Harvard Law School in December 2018 (with an accompanying blog piece¹⁷).

National Societies

The **Korean Red Cross** published an expert paper on legal reviews and autonomous weapon systems in the *Korean Journal of International Humanitarian Law*, and the **British Red Cross** supported the UK authorities in promoting legal reviews and sharing best practice.

Future opportunities and challenges

The challenge remains to encourage States to set up or strengthen legal review mechanisms, with too few States having such mechanisms and too little being known about how reviews are carried out. The spotlight on new weapons technologies provides an opportunity to improve awareness of the importance of legal reviews, to give practical guidance on how to conduct them and to encourage transparency.

¹⁷ Netta Goussac, 'Safety net or tangled web: Legal reviews of AI in weapons and war-fighting', *Humanitarian Law and Policy Blog*, 18 April 2019: <https://blogs.icrc.org/law-and-policy/2019/04/18/safety-net-tangled-web-legal-reviews-ai-weapons-war-fighting/>.

The ICRC will maintain a dialogue with States, bilaterally and in multilateral forums, and continue to foster exchanges of experiences on weapons review mechanisms and procedures, which will be supported by an updated *Guide to the Legal Review of New Weapons, Means and Methods of Warfare*.¹⁸ National Societies should, as appropriate and according to their capacities, urge their governments to establish or strengthen legal review procedures or mechanisms.

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

The **Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons Convention)** now has 193 States Parties, with Palestine as the newest party to the Convention. However, the prohibition has been undermined by the repeated use of such weapons in Syria since 2013, but also in Iraq (2017), Malaysia (Kuala Lumpur airport, 2017) and the United Kingdom (Salisbury, 2018). Divergent views among States Parties on the conclusions of the investigation carried out by the UN and the Organisation for the Prohibition of Chemical Weapons (OPCW) regarding the use of chemical weapons by the Syrian government, as well as on the new OPCW mandate, meant that the Fourth Review Conference in The Hague in November 2018 failed, for the first time in the Convention’s history, to adopt a Final Document by consensus, with the outcome reflected only in the Chairperson’s Report.

In relation to separate concerns about the development and use of highly toxic chemicals as weapons for law enforcement, an issue first highlighted by the ICRC in 2003, an Australian-Swiss initiative on the issue of aerosolization of central nervous system-acting chemicals for law-enforcement purposes has succeeded in gaining the support of 42 States.

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 182 States Parties, with the Central African Republic, Niue, Palestine and Samoa joining the treaty in the past two years. The norm prohibiting the use of biological weapons, which is part of customary IHL, remains strong. States Parties resumed intersessional work in 2018, with a focus on five key areas for strengthening the Convention: international cooperation; review of science and technology developments; national implementation; assistance and response to potential use of biological weapons; and institutional strengthening.

¹⁸ ICRC, *A Guide to the Legal Review of New Weapons, Means and Methods of Warfare : Measures to Implement Article 36 of Additional Protocol I of 1977*, ICRC, Geneva, 2006 (update forthcoming).

Movement action 2017–2019

ICRC

The ICRC delivered statements at the Conference of the States Parties to the Chemical Weapons Convention in November-December 2017 and the Fourth Review Conference in November 2018. In its statements, the ICRC condemned the continued and confirmed use of chemical weapons, highlighted the need for States to improve capacities to assist victims of their use, and repeated its call on States to limit the use of toxic chemicals as weapons for law enforcement to riot control agents only.¹⁹

The ICRC participated in the meetings of States Parties to the Biological Weapons Convention, delivering a statement in 2017 urging States to make progress in four areas, ultimately taken forward to the 2018–2020 meetings, focusing on the need to improve capacities to respond to the potential use of biological weapons, including learning from experiences in responding to naturally occurring disease outbreaks such as Ebola.²⁰

The ICRC continued to strengthen its response capacity to prevent and protect its staff, responders and medical facilities from chemical, biological, radiological and nuclear hazards.

National Societies

The **Belgian Red Cross**, **British Red Cross** and **Spanish Red Cross** kept up a dialogue with their national authorities on the issue of chemical and biological weapons, and the **Canadian Red Cross** hosted a conference on chemical weapons in 2018, attended by members of the Canadian armed forces, students and academics.

Future opportunities and challenges

The ICRC will continue to engage in bilateral discussions and participate in multilateral forums to urge States and parties to armed conflicts to respect the absolute prohibitions on chemical and biological weapons, and to build further support among States for its position on the use of toxic chemicals as weapons for law enforcement.

3) 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 legal obligations and respect for existing prohibitions and restrictions on weapons of humanitarian concern, and on influencing discussions on 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

¹⁹ ICRC statement at the Conference of the States Parties to the Chemical Weapons Convention, The Hague, November 2017: <https://www.icrc.org/en/document/twenty-second-session-conference-states-parties-chemical-weapons-convention>, and ICRC statement at the Fourth Special Session of the Conference of States Parties to Review the Operation of the Chemical Weapons Convention, The Hague, November 2018: <https://www.icrc.org/en/document/fourth-special-session-conference-states-parties-review-operation-chemical-weapons>.

²⁰ ICRC statement at the Meeting of States Parties to the Biological Weapons Convention, Geneva, December 2017: <https://www.icrc.org/en/document/meeting-states-parties-convention-prohibition-development-production-and-stockpiling>.

particular emphasis on implementation of the Movement Strategy on Landmines, Cluster Munitions and other Explosive Remnants of War and on promotion of the ATT.