



Power of humanity

Council of Delegates of the International
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Weapons and international humanitarian law

DRAFT ELEMENTS OF RESOLUTION

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Weapons and international humanitarian law

BACKGROUND

The draft elements of the proposed resolution on weapons and international humanitarian law seek to provide an outline of the possible substance of individual paragraphs, without providing a definitive draft text. Each paragraph is followed by a rationale explaining why it would be useful to include such a paragraph in the resolution.

This document is being shared for consultation with the members of the Council of Delegates of the International Red Cross and Red Crescent Movement in order to gather a first round of comments and feedback, and to gain an initial understanding of whether the proposed approach would be acceptable and garner consensus.

When providing comments and feedback on this document, please consider the following questions:

- Do you agree with the proposed elements for the preambular and operative paragraphs of the proposed resolution?
- Are there any elements that are missing or should be included in the resolution?

Detailed comments on the wording of the draft elements of this resolution are not expected at this stage. There will be an opportunity to comment on specific wording at a later stage, once the draft zero of the resolution is available.

INTRODUCTION

In order to uphold and strengthen the rules of international humanitarian law (IHL) governing weapons, concerted efforts must be made to ensure that existing treaties are adopted, ratified and faithfully implemented, that the humanitarian and IHL implications of new technological developments are better understood and addressed, and that the known or potential humanitarian impacts of weapons are taken into account by states and the public at large. The International Red Cross and Red Crescent Movement (the Movement) has played and will continue to play a crucial role in this regard, including by mobilizing political will and resources, and promoting awareness of and responding to the effects of weapons of concern.

Like the Movement's work to directly assist vulnerable people and victims of war, the Movement's efforts to address arms-related issues, on the basis of humanitarian law, have saved lives and prevented suffering. The Movement's long-standing commitment in this area is crucial to the protection of human life and dignity.

Resolution 7 of the 2013 Council of Delegates called 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. The resolution also requested that all components of the Movement increase their efforts to implement the 2009 Movement Strategy on Landmines, Cluster Munitions and other Explosive Remnants of War (the Movement Strategy). Many states and National Red Cross and Red Crescent Societies (National Societies) have also made pledges to undertake specific action on arms-related issues. Since the 2013 Council of Delegates, the International

Committee of the Red Cross (ICRC) has submitted four progress reports on the implementation of Resolution 7.

The text below outlines the draft elements of an omnibus resolution, “Weapons and international humanitarian law”. It aims to cover developments, challenges and opportunities in this area which will require further efforts, commitments and follow-up by Movement components in the coming years to advance the humanitarian agenda in relation to weapons issues.

As was the case for Resolution 7 of 2013, implementation of this proposed resolution will be monitored by the ICRC, in cooperation with Movement partners, and reported, as necessary, to the Council of Delegates.

Preambular paragraphs (PP)

PP 1:

This preambular paragraph could *recall* the previous resolutions on the high human cost of the use and proliferation of certain types of weapons and the response of the Movement to these humanitarian consequences, in particular Resolution 7 of the 2013 Council of Delegates, “Weapons and international humanitarian law”; Resolution 7 of the 2009 Council of Delegates, “Preventing humanitarian consequences arising from the development, use and proliferation of certain types of weapons”; and Resolution 2 of the 2005 Council of Delegates, “Weapons and international humanitarian law”; as well as numerous other resolutions on landmines, cluster munitions, arms transfers, nuclear weapons and war in cities, and *reaffirm* the commitments undertaken in these resolutions.

Rationale:

The current resolution should be situated within and build upon the Movement’s previous commitments related to the humanitarian concerns relating to certain types of weapons.

PP 2:

This preambular paragraph could *recall* that, under IHL, the right of parties to an armed conflict to choose means and methods of warfare is not unlimited, and that any new weapon, means or method of warfare must be capable of being used and must only be used in compliance with IHL, in line with the requirements for rigorous legal review set forth in Article 36 of Protocol I additional to the Geneva Conventions. This preambular paragraph could also *recall* that, in cases not covered by specific IHL treaties, people affected by armed conflicts remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience. Finally, this paragraph could *reaffirm* the need to continue codifying and progressively developing the rules of international law applicable in armed conflict.

Rationale:

To situate the resolution within the broader protective framework of IHL, including the Martens Clause.

PP 3:

This preambular paragraph could *express grave concern* at the increasingly strident nuclear rhetoric, the prevalence of threats to use nuclear weapons, the heightened risk of their use and their catastrophic humanitarian consequences. It could state that it is extremely doubtful that nuclear weapons could ever be used in accordance with the principles and rules of IHL, and highlight the lack of international and domestic capacity to provide an adequate humanitarian response if nuclear weapons were used. It could further *welcome* the work of the Movement

Support Group, efforts made to date to implement the 2022–2027 Action Plan on the Non-Use, Prohibition and Elimination of Nuclear Weapons, and the results of the 2022 and 2023 meetings of states party to the Treaty on the Prohibition of Nuclear Weapons.

Rationale:

To situate the resolution against the increasingly alarming risk of the use of nuclear weapons and the need for urgent action by the entire international community, including the Movement and states.

PP 4:

This preambular paragraph could *recall* the absolute prohibitions on biological and chemical weapons, the December 2021 decision by states party to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention) that the aerosolized use of central-nervous-system-acting chemicals is inconsistent with law enforcement purposes under the convention, and the inadequacy of existing assistance and response capacities in the event of deliberate or accidental release of chemical, biological, radiological or nuclear materials, including from civilian facilities holding such materials.

Rationale:

To outline the framework governing chemical, biological, radiological or nuclear materials, and to highlight the need for greater assistance and response capacities.

PP 5:

This preambular paragraph could *express ongoing concern* about the impact in humanitarian terms of the widespread and inadequately controlled availability of conventional arms, not only during, but also in the aftermath of armed conflict and other situations of violence. This preambular paragraph could also *recall* that, even if not party to the Arms Trade Treaty or regional arms-transfer agreements, all states are, at a minimum, obliged to respect and ensure respect for IHL when making decisions about arms transfers.

Rationale:

With weapons continuing to flow into areas where serious violations of IHL are commonplace, there remains an apparent tension between commitments undertaken by states and actual practice. This preambular paragraph is intended to highlight key, specific frameworks governing arms-transfer decisions, while also emphasizing the obligations of all states under IHL in this regard.

PP 6:

This preambular paragraph could *express concern* about the indiscriminate effects of landmines, cluster munitions and explosive remnants of war, the ongoing grave threat to civilians posed by these weapons during and after armed conflict, and the disturbing trend of continuing high levels of civilian casualties from them, including alarming cases of new use of anti-personnel mines and cluster munitions.

Rationale:

To highlight persisting humanitarian concerns about the continued high level of civilian casualties resulting from the use of these weapons, the worrisome recent developments regarding the use of improvised anti-personnel mines and frequent delays in the implementation of clearance obligations, and the need to strengthen Movement efforts with regard to these weapons.

PP 7:

This preambular paragraph could *commend* the long-term commitment and efforts of all the Movement's components that have implemented the Movement Strategy on Landmines, Cluster Munitions and other Explosive Remnants of War: Reducing the Effects of Weapons on Civilians, adopted by Resolution 6 of the 2009 Council of Delegates. It could also *highlight* the need to strengthen the Movement's response to the civilian harm caused by these weapons, and, in this regard, *note* the consultations held with National Societies in the Africa region and *highlight* specific results and needs.

Rationale:

To situate the resolution within the existing Movement framework for work on these weapons and highlight the need to strengthen the Movement's response in the face of ongoing high levels of civilian casualties.

PP 8:

This preambular paragraph could *express ongoing concern* about the direct, indirect and long-term suffering of civilians resulting from explosive weapons in populated areas (EWIPA), including the large number of casualties, the grave psychological harm, the disruption of essential services, the displacement of people and the weapon contamination, and *reiterate* the Movement's position on the use of EWIPA, as reflected in Resolution 7 of the 2013 Council of Delegates, "Weapons and international humanitarian law" and Resolution 6 of the 2022 Council of Delegates, "War in cities".

Rationale:

To highlight persisting humanitarian concerns about the use of these weapons and situate the resolution against the backdrop of the Movement's position on EWIPA.

PP 9:

This preambular paragraph could *warmly welcome* the adoption by [xx] states of the Political Declaration on Strengthening the Protection of Civilians from the Humanitarian Consequences arising from the Use of Explosive Weapons in Populated Areas (EWIPA Political Declaration) and its first follow-up conference, which took place in Oslo in April 2024.

Rationale:

To situate the resolution against the backdrop of recent relevant developments in the field of EWIPA.

PP 10:

This preambular paragraph could *emphasize* the Movement's particular concern about the human cost of the use in urban warfare of the weapons, means and methods mentioned in this resolution and the devastating consequences for the civilian population of fighting in populated areas, and *reiterate* the Solemn Appeal on War in Cities being adopted by Resolution [x] at this Council of Delegates.

Rationale:

The Movement has a particular focus on urban warfare, as evidenced by Resolution 6 of the 2022 Council of Delegates. We recognize that many of these consequences are not unique to war in cities, but that they occur on a significantly larger scale because of the density of the civilian population and civilian objects, the population's reliance on interconnected infrastructure systems and the often-protracted nature of urban fighting.

PP 11:

This preambular paragraph could *express concern* about the serious humanitarian, legal and ethical concerns raised by the unconstrained development and use of autonomous weapon systems (AWS), especially in light of the deployment of weapons with autonomous functions in current conflicts. Unconstrained development and use of AWS has the potential, in particular, to erode human control over the use of force, posing risks for both civilians and combatants, making compliance with the fundamental rules of IHL challenging, and creating ethical risks for humanity.

Rationale:

To build upon the concern, expressed in Resolution 7 of the 2013 Council of Delegates, about the potential adverse humanitarian impact of AWS. This preambular paragraph is to reflect the Movement's increased understanding of the risks, as explored during the 2022 Council of Delegates' workshop "Towards a Movement position on autonomous weapon systems" and subsequent meetings with National Societies on this issue and the proposed solutions for addressing the risks, as articulated in the May 2021 position of the ICRC on AWS.

PP 12:

This preambular paragraph could *express concern* about the potential human cost of new technologies of warfare that are being developed or deployed, including cyber capabilities, as well as other military capabilities that incorporate artificial intelligence, and *recall* that any new weapons, means and methods of warfare must be capable of being used and must only be used in compliance with IHL.

Rationale:

To highlight the concerns raised by new and future technologies of warfare.

PP 13:

This preambular paragraph could *deplore* the use of digital means and methods of warfare to disrupt medical and humanitarian relief efforts, *recall* the legal and protective value of the distinctive emblems and signals, as applicable, in identifying medical units and transports, medical and religious personnel, and members of the International Red Cross and Red Crescent Movement – emblems and signals which, by virtue of their inclusion in the 1949 Geneva Conventions and over 160 years of continuous practice, have become universally recognized symbols of impartial and neutral aid and protection for victims of armed conflict and other emergencies, and *welcome* the research and consultations conducted by the ICRC, in collaboration with academic institutions and other components of the Movement, on the feasibility of a "digital emblem", meaning a digital means to identify the digital infrastructure and data of organizations and entities entitled to display the distinctive emblems recognized under IHL.

Rationale:

To reaffirm the role of the distinctive emblems under IHL while building on Resolution 12, "Safeguarding humanitarian data" of the 2022 Council of Delegates, and welcome the ICRC's research and consultations on a possible digital emblem.

Operative paragraphs (OP)**OP 1:**

This operative paragraph could *recall* Resolution 7 of the 2022 Council of Delegates, *reiterate* the calls to all states to sign, ratify or accede to and faithfully implement the Treaty on the Prohibition of Nuclear Weapons and the Nuclear Non-Proliferation Treaty (NPT), *call* on states to fully implement the commitments made at the NPT review conferences, to take immediate and

concrete steps to reduce the risk of nuclear weapons being used, and to condemn all threats to use nuclear weapons, implicit or explicit, regardless of circumstances. It could *call upon* all components of the Movement to redouble their efforts to encourage states to take these actions, in particular through the implementation of the 2022–2027 Action Plan on the Non-Use, Prohibition and Elimination of Nuclear Weapons.

Rationale:

To demonstrate the Movement’s united voice and sense of urgency regarding action on nuclear weapons, and to increase the engagement of National Societies in implementing the action plan.

OP 2:

This operative paragraph could *call upon* states to uphold the prohibitions set out in the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (Biological and Toxin Weapons Convention) and the Chemical Weapons Convention and to limit the use of toxic chemicals as weapons for law enforcement to riot control agents only, *invite the* ICRC to continue guiding, coordinating and supporting the Movement in the development of assistance and response capacities in the event of deliberate or accidental release of chemical, biological, radiological or nuclear materials and *invite* states and the Movement to reflect on their response capacities and existing risks in their operating contexts and to identify and communicate their response capacities, plans and needs, as appropriate.

Rationale:

This addresses the risks of the use or release of nuclear, chemical and biological weapons and hazards. It is important given the recent use of chemicals weapons in Syria, fighting near factories with chemicals leading to the release of hazardous materials and fighting near civilian nuclear facilities. It also aims to ensure that the 2021 decision of states party to the Chemical Weapons Convention is upheld, and prevent the use of other highly toxic chemicals for law enforcement purposes, which could undermine the norms of the 1925 Geneva Protocol and 1982 Chemical Weapons Convention. It also draws attention to the need for all components of the Movement to have in place, to the extent possible, assistance and response capacities in the event of the release of chemical, biological, radiological or nuclear materials and to be aware of support in these fields available from the ICRC.

OP 3:

This operative paragraph could *call 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. It could also *call upon* all states to place greater emphasis on the humanitarian impacts of transfer decisions and the implications for IHL when transfers are made to recipients that commit serious violations of IHL. In particular, it could *call upon* states to make compliance with IHL an explicit criterion for assessing transfers, take practical steps to facilitate assessment of the risk of IHL violations, and take effective measures to mitigate that risk. The resolution could also commit the ICRC and the National Societies to supporting states to this end, in accordance with their respective humanitarian mandates and the Fundamental Principles.

Rationale:

If the Arms Trade Treaty is to be effective in ensuring that weapons do not end up in the hands of those who would use them to commit war crimes and other serious crimes, states party to the treaty must implement its provisions faithfully in practice, in a manner that aligns with their obligation to respect and ensure respect for IHL, and many more states must join the treaty, in particular those most involved in international arms transfers.

OP 4:

This operative paragraph could *urge* National Societies, in light of the ongoing high numbers of civilian casualties, to renew their advocacy efforts on and commitment to implementing the Movement Strategy on Landmines, Cluster Munitions and other Explosive Remnants of War, including to ensure universalization of 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 on Explosive Remnants of War of the Convention on Prohibitions or Restrictions on the Use Of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (Convention on Certain Conventional Weapons), and to implement the Movement's guidelines on risk awareness and safer behaviour to the fullest extent possible in contaminated contexts. It could *call upon* all components of the Movement to encourage increased political leadership and better donor coordination to meet treaty deadlines and respect treaty commitments as soon as possible, in particular as regards the clearance of contaminated areas.

Rationale:

To renew and strengthen the engagement of all Movement components to respond to the human suffering posed by the continued use and delayed clearance of these weapons.

OP 5:

This operative paragraph could renew the Movement *call on* all states and parties to armed conflict to strengthen the protection of civilians from the indiscriminate use and effects of explosive weapons, including through the rigorous application of existing rules of IHL, and to avoid the use of explosive weapons with a wide impact area in populated areas.

Rationale:

To show the Movement's united voice on EWIPA.

OP 6:

This operative paragraph could *call on* all states that have not yet done so to endorse and implement the EWIPA Political Declaration without delay.

Rationale:

To help promote the universalization of the EWIPA Political Declaration.

OP 7:

This operative paragraph could *recall* Resolution 6 of the 2022 Council of Delegates, "War in cities", and *welcome* the work being done under the 2022–2027 Movement Action Plan to Prevent and Respond to the Humanitarian Impacts of War in Cities. It could also *note* the ongoing work under Resolution 11 of the 2022 Council of Delegates, "Strengthening the resilience of urban communities: Our way forward".

Rationale:

To acknowledge the work of the previous Council of Delegates and the range of activities that the Movement Reference Group on War in Cities has undertaken to improve our prevention and response capacities.

OP 8:

This operative paragraph could *stress* the need for all components of the Movement to take urgent and collective action to address the risks posed by AWS, in particular by *calling upon* states to negotiate and adopt new, international legally binding rules by 2026 that prohibit unpredictable AWS and those designed or used to target persons, and that restrict the development and use of all other autonomous weapons.

Rationale:

To bring a strengthened and cohesive humanitarian voice, building on the 2022 Council of Delegates workshop “Towards a Movement position on autonomous weapon systems,” to influence multilateral efforts by states to address the current and pressing challenges posed by AWS in line with the recommendations made by the ICRC in May 2021. To demonstrate to states a global, principled humanitarian stance by the Movement on AWS as a weapon of concern for which urgent action by states to adopt new rules is crucial.

OP 9:

This operative paragraph could *call upon* states to increase their understanding of and, where necessary, address the humanitarian, legal and ethical risks posed by new weapons, means and methods of warfare, including cyber and digital information operations, the use of artificial intelligence in weapon systems and in other means or methods of warfare, and military operations in or in relation to outer space; and *call upon* states to ensure that the development and use of any new weapons, means or methods of warfare relying on these technologies is in compliance with IHL, and subject them to a rigorous legal review in accordance with the obligation set forth in Article 36 of Protocol I additional to the Geneva Conventions and the obligation to ensure respect for IHL in all circumstances.

Rationale:

To address the challenges of “future warfare”, in particular the risk of civilian harm. Legal review is a key instrument for ensuring respect for IHL by all states when developing and deploying new weapons, means and methods of warfare, and an obligation for states party to Protocol I addition to the Geneva Conventions.

OP 10:

This operative paragraph could *endorse* the result of the ongoing research on, and testing of, a digital emblem, and *encourage* the ICRC, in consultation with states and the Movement, to propose a technical, comprehensive and lasting solution, and propose options for the development of IHL necessary to incorporate it and ensure those entitled to the use distinctive emblem continue to be protected against digital threats.

Rationale:

To invite the ICRC to continue working closely with states and the Movement on a digital emblem.

OP 11:

This operative paragraph could *invite* the ICRC, in cooperation with the Movement, to report, as necessary, to the Council of Delegates on relevant developments under the resolution.

Rationale:

To provide a means for monitoring and reporting back on the implementation of and developments related to the resolution.