



Power of humanity

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Weapons and international humanitarian law

BACKGROUND DOCUMENT

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Weapons and international humanitarian law

EXECUTIVE SUMMARY

This background document is submitted in support of the draft Council of Delegates resolution “Weapons and international humanitarian law”.

The draft resolution aims to cover developments, challenges and opportunities that will require further efforts, commitments and follow-up by components of the International Red Cross and Red Crescent Movement (Movement) in the coming years to address the most pressing humanitarian concerns in relation to the use and development of weapons.

This background document and the draft resolution focus on key legal and political developments and on the work of the International Committee of the Red Cross (ICRC) and National Red Cross and Red Crescent Societies (National Societies). ICRC dissemination activities and legal advice on ratification procedures and the development of national legislation are not described in detail. The wide range of related operational activities undertaken by the ICRC and many National Societies are also outside the scope of the background document.

1) 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 and potential humanitarian impacts of weapons are taken into account by states and the public at large. The Movement has played and will continue to play a crucial role in this regard, including by mobilizing political will and resources, promoting awareness of the effects of weapons of concern and responding to them.

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 IHL, 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.

2) BACKGROUND

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. In addition, many states and National Societies have made pledges to undertake specific action on arms-related issues. Since the 2013 Council of Delegates, the ICRC has submitted four progress reports on the implementation of Resolution 7.

3) ANALYSIS

A) NUCLEAR WEAPONS

Resolution 7 “Working towards the elimination of nuclear weapons” was adopted by the 2022 Council of Delegates in light of the alarming trend towards a new nuclear arms race and the growing risk that nuclear weapons will be used again with intent or by miscalculation or accident, as shown by the growing tensions between nuclear-armed states and their allies, threats to use nuclear weapons, the development of new types of nuclear weapons and the new and expanded roles of nuclear weapons in military plans, doctrines and concepts.

These trends have only continued, demonstrating the need for urgent action by the entire international community and renewed efforts by all components of the Movement to implement the 2022–2027 Action Plan on the Non-Use, Prohibition and Elimination of Nuclear Weapons established by Resolution 7.

B) CHEMICAL, BIOLOGICAL, RADIOLOGICAL AND NUCLEAR MATERIALS

Recent conflicts have demonstrated the continuing risks arising from the release of chemical, biological, radiological and nuclear materials in armed conflict, whether deliberate or accidental – for example, the use of chemical weapons in the Syrian conflict, fighting near factories that contain chemicals leading to the release of hazardous materials and fighting near civilian nuclear facilities, such as the Zaporizhzhia Nuclear Power Plant in Ukraine. In this context, it is critical that the absolute prohibitions on chemical and biological weapons be upheld, including the 2021 clarification by states party to the Chemical Weapons Convention that the aerosolized use of central nervous system-acting chemicals for law enforcement purposes is prohibited and other relevant rules of IHL.

Nevertheless, there remains a need for all components of the Movement to have in place, to the extent possible, assistance and response capacities to meet needs in the event of the use or release of chemical, biological, radiological or nuclear materials.

C) ARMS TRANSFERS

Inadequate controls on international arms flows contribute to the widespread availability of arms and ammunition. This in turn facilitates violations of IHL and human rights, with devastating consequences for individuals and communities.

Against this background, the Arms Trade Treaty (ATT) aims to set the highest common international standards on international arms transfers. It holds out the promise of saved lives and livelihoods and greater respect for IHL and human rights by seeking to prevent weapons from falling into the hands of those who would use them to commit war crimes or other international crimes.

As weapons, including heavy explosive weapons, guns and ammunition, continue to flow – overtly and covertly – to some of today’s most brutal armed conflicts, there is an apparent gap between the commitments made by states under the ATT and IHL and the arms transfer decisions taken by many of them in practice.

Given their ability to provide or withhold the means by which war is fought, states that supply weapons to a party to an armed conflict bear a particular responsibility to leverage their influence with a view to reducing the human cost of war. They must do everything reasonably within their power to prevent and put an end to violations of IHL committed by parties to an armed conflict.

The promotion of responsible action and restraint in the international arms trade therefore remains an urgent humanitarian imperative.

To reduce human suffering and prevent the commission of war crimes and other international crimes, states must faithfully implement their obligations in practice, in a manner consistent with their obligation to respect and ensure respect for IHL in all circumstances, and there is a role for the Movement to play in supporting these efforts.

D) LANDMINES, CLUSTER MUNITIONS AND EXPLOSIVE REMNANTS OF WAR

Since the adoption of the landmark Anti-Personnel Mine Ban Convention (APMBC) in 1997 and the Convention on Cluster Munitions (CCM) in 2008, remarkable progress has been made in protecting lives and livelihoods, with millions of cluster munitions and landmines destroyed by states party to these treaties. Vast areas of land have been cleared of landmines, cluster munitions and other explosive remnants of war (ERW). Today, over three-quarters of UN member states are bound by the APMBC, and well over half have joined the CCM. These instruments provide a strong international framework for the elimination of anti-personnel landmines and cluster munitions, and their norms have curtailed production of these weapons beyond the circle of states parties.

Movement components have made significant contributions to these advances. They include efforts to promote the rules of IHL applicable to landmines, cluster munitions and ERW and activities aimed at reducing the impact of weapon contamination and supporting victims with comprehensive assistance.

These hard-won achievements are now under threat, with landmines, cluster munitions and ERW continuing to take a terrible toll on human lives. The number of casualties reported each year remains alarmingly high, vast areas of agricultural land remain contaminated and particular risks for civilians, critical civilian infrastructure and humanitarian operations arise from contamination in urban settings. Challenges include new use of improvised and other anti-personnel mines, including in violation of the APMBC, new use of cluster munitions, stalled or slow clearance of contaminated land, insufficient assistance to victims, inadequate attention to promoting risk awareness and safer behaviour and slowing progress towards universal adherence.

This tragic reality lends new urgency to reinvigorating our collective commitment to the full and effective implementation of the Movement Strategy on Landmines, Cluster Munitions and Other Explosive Remnants of War: Reducing the Effects of Weapons on Civilians adopted by the 2009 Council of Delegates to prevent and respond to the human suffering resulting from the continued use and delayed clearance of these weapons.

E) WAR IN CITIES, INCLUDING EXPLOSIVE WEAPONS IN POPULATED AREAS

War in cities has devastating humanitarian consequences for civilian populations, including as a result of the use of explosive weapons in urban and other populated areas.

The challenges this poses are analysed in the background document to the resolution “War in cities: A solemn appeal from the International Red Cross and Red Crescent Movement” to be adopted at the 2024 Council of Delegates.

F) NEW TECHNOLOGIES OF WARFARE

Current armed conflicts have demonstrated the growing significance of new technologies of warfare and their use in novel domains, such as cyberspace and outer space. Such use may result in significant humanitarian consequences on top of the suffering that the use of more traditional weapons imposes on vulnerable populations during armed conflict.

Recent years have seen an increased use of information and communication technologies by states and non-state actors during armed conflict. Artificial intelligence, particularly machine-learning techniques, has the potential to increase the scale and severity of cyber and information operations, negatively impact the nature and quality of military decision-making and increase unpredictability in autonomous weapon systems (for autonomous weapon systems, see section G below).

In addition, the military application of technology enabled by space systems is an integral part of modern-day military operations. As the role of space systems in military operations continues to grow – despite the long-term desire and commitment of the international community to explore and use space for peaceful purposes – so too does the likelihood of them being targeted during armed conflict. Military operations in or in relation to outer space do not occur in a legal vacuum; they are constrained by existing international law, notably the UN Charter, the Outer Space Treaty, IHL and the law of neutrality. In light of the risk of significant civilian harm, states may decide to set general prohibitions or specific limits with regard to weapons, hostilities or other military operations in or in relation to outer space for a range of reasons, and humanitarian impact should be one of them.

The draft resolution aims to highlight the concerns raised by such new and future technologies of warfare, in particular the risk of civilian harm and challenges for compliance with IHL. While there may be novel aspects to these concerns, it is important to avoid any suggestion that the development and use of these new technologies in warfare takes place in an ungoverned space. Accordingly, the draft resolution clearly recalls existing key IHL frameworks and mechanisms for mitigating these risks, including the obligation to conduct legal reviews and to ensure respect for IHL in all circumstances.

An assessment must be made as to whether the use of a new weapon, means or method of warfare is consistent with the principles of humanity and the dictates of public conscience (the Martens Clause) if it is not covered by specific international agreements.

This aligns with the goal that was set in the Agenda for Humanitarian Action, adopted by the 28th International Conference of the Red Cross and Red Crescent (International Conference) in 2003:

In light of the rapid development of weapons technology and in order to protect civilians from the indiscriminate effects of weapons and combatants from unnecessary suffering and prohibited weapons, all new weapons, means and methods of warfare should be subject to rigorous and multidisciplinary review.

Subsequently, the ICRC published *A Guide to the Legal Review of New Weapons, Means and Methods of Warfare* in 2006. Article 36 of Additional Protocol I requires each state party to determine whether the employment of any new weapon, means or method of warfare that it studies, develops, acquires or adopts would, in some or all circumstances, be prohibited by international law. All states have an interest in assessing the legality of new weapons, regardless of whether they are party to Additional Protocol I, as it contributes to ensuring that

a state's armed forces are capable of conducting warfare in accordance with its international obligations. In the view of the ICRC, the requirement to carry out a legal review also flows from the obligation to ensure respect for IHL. The conduct of legal reviews of new weapons is of particular importance today in light of the rapid development of new weapons technologies. Weapons can impact women, men, girls and boys differently. To the extent possible, the reviewing authority should take into account any potential gendered and other different impacts, including by using sex-, disability- and age-disaggregated data.

With the passage of time and the development of state practice, the ICRC decided to embark on a project to update the guide. One of the objectives is to reflect contemporary state practice and legal interpretations and identify challenges in conducting legal reviews of new technologies of warfare that states must address.

G) AUTONOMOUS WEAPON SYSTEMS

In Resolution 7 of the 2013 Council of Delegates, the Movement expressed concern about the potential adverse humanitarian impact of autonomous weapon systems (AWS), which it understands to be weapons that select and apply force to targets without human intervention. Since then, the Movement has increased its understanding of these risks, including through the 2022 Council of Delegates workshop "Towards a Movement position on autonomous weapon systems" and subsequent meetings with National Societies on this issue.

Addressing the dangers posed by AWS remains an urgent humanitarian priority. Such weapon systems currently pose serious humanitarian, legal, ethical and security concerns, with militaries deploying weapons with increasingly autonomous functions.

Since 2021, the ICRC has been calling for [new binding international law](#) to establish clear prohibitions and restrictions on AWS. Last year, the ICRC president and the UN secretary-general issued a [joint appeal to all states](#) to negotiate such rules by 2026. In particular, the ICRC has recommended that these rules include specific prohibitions both on unpredictable AWS and those that target humans directly. For all other AWS, there must be strict restrictions on development and use. The ICRC rarely recommends the creation of new rules, and it does not do so lightly. The specific way in which AWS function necessitates the progressive development of law to ensure existing rules are upheld and strengthened. Just as with anti-personnel landmines, blinding laser weapons and cluster bombs, we need a new legally binding instrument to protect civilians and combatants and preserve humanity in warfare.

H) DIGITAL EMBLEM

The draft resolution aims to reaffirm the role of the distinctive emblems under IHL, building on Resolution 12 "Safeguarding humanitarian data" of the 2022 Council of Delegates, and to welcome the ICRC's research and consultations on a possible "digital emblem". Since 2020, the ICRC has partnered with academic institutions to identify technical ways to create a digital emblem and consulted a global group of experts on the potential benefits, risks and technical solutions.¹ Over the last two years, the ICRC has publicly presented the idea of a new digital marker or some other means of identification for the digital assets of specifically protected entities, in other words, a digital emblem. In 2023, the Australian Red Cross and the ICRC also held regional consultations with National Societies with as broad a reach as possible. Rather than creating new protections under IHL, a digital emblem would simply act as a digital equivalent to the physical emblem, identifying the assets of medical units and transports (i.e. vehicles), medical and religious personnel, and components of the Movement.

¹ See ICRC, [Digitalizing the Red Cross, Red Crescent and Red Crystal Emblems: Benefits, Risks, and Possible Solutions](#), 2022.

4) RESOURCE IMPLICATIONS

The resolution urges the Movement components to continue strengthening their work to address the humanitarian concerns arising from the use and development of weapons, within the scope of their respective mandates, capacities and operational needs.

The implementation of these commitments may have resource implications for Movement components, depending on their existing policies, programmes and activities.

5) IMPLEMENTATION AND MONITORING

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

6) CONCLUSION AND RECOMMENDATIONS

A) NUCLEAR WEAPONS

The draft resolution highlights that the risks posed by nuclear weapons, as outlined in Resolution 7 of the 2022 Council of Delegates, are still growing alarmingly and that the situation is critical. It calls on states to take specific actions, including joining and fully implementing both the Treaty on the Non-Proliferation of Nuclear Weapons and the Treaty on the Prohibition of Nuclear Weapons and taking concrete steps to reduce the risk of the deliberate or accidental use of nuclear weapons. It aims to encourage National Societies to engage more actively in implementing the 2022–2027 Action Plan.

B) CHEMICAL, BIOLOGICAL, RADIOLOGICAL AND NUCLEAR MATERIALS

The draft resolution draws the Movement's attention to the importance of the absolute prohibitions on chemical and biological weapons and recent clarifications by states on chemical weapons. It should spur continued efforts by the Movement to develop their assistance and response capacities to meet needs in the event of the deliberate or accidental release of chemical, biological, radiological or nuclear materials, while highlighting to states the limits of those capacities.

C) ARMS TRANSFERS

The resolution recalls that if the ATT is to make a real difference on the ground, where it matters most, states must give greater weight to the humanitarian consequences of arms transfer decisions and reduce the attendant risks more effectively. It calls on states to take concrete measures to this end, including making IHL and international human rights law compliance an explicit criterion in arms transfer assessments and exchanging relevant information with a view to strengthening risk mitigation.

Building on efforts and commitments made previously,² the draft resolution commits the ICRC and National Societies to supporting states in this regard, in accordance with their respective humanitarian mandates and the Fundamental Principles.

² Resolution 2, Objective 5, 31st International Conference; Resolution 3, 30th International Conference; Resolution 1, Final Goal 2.3, 28th International Conference; Resolution 1, Annex 2, Final Goal 1.5, 27th International Conference.

D) LANDMINES, CLUSTER MUNITIONS AND EXPLOSIVE REMNANTS OF WAR

To address long-standing and new challenges, the draft resolution aims to reinvigorate our collective commitment to fully and effectively implementing the 2009 Movement Strategy on Landmines, Cluster Munitions and Other Explosive Remnants of War. The resolution does not aim to revise the strategy or replace it. Rather, it seeks to revitalize and enhance its implementation in light of insights gained and evolving good practices, including the new Movement guidelines *Increasing Resilience to Weapon Contamination through Behaviour Change*, published in 2019.

E) WAR IN CITIES, INCLUDING EXPLOSIVE WEAPONS IN POPULATED AREAS

To address the devastating consequences of war in cities, including the use of explosive weapons in urban and other populated areas, a solemn appeal by the Movement to all states and non-state armed groups that are parties to an armed conflict is to be adopted through the draft resolution “War in cities: A solemn appeal from the International Red Cross and Red Crescent Movement”.

F) NEW TECHNOLOGIES OF WARFARE

The draft resolution calls for states to increase their understanding of and, where necessary, address the humanitarian, legal and ethical risks posed by new technologies of warfare. Importantly, it recalls existing IHL frameworks and emphasizes that despite the changing nature of warfare and weaponry, humanitarian law must be complied with at all times.

G) AUTONOMOUS WEAPON SYSTEMS

The draft resolution will embody a strengthened, principled, cohesive, humanitarian Movement voice on AWS as weapons of concern. It will ideally influence states’ multilateral efforts to address the current and pressing challenges posed by AWS, in particular by calling on them to adopt new rules by 2026, in line with the recommendations made by the ICRC and the UN secretary-general. These rules are needed now, as a preventive measure, to uphold protections for both civilians and combatants and to avoid terrible consequences for humanity.

H) DIGITAL EMBLEM

The draft resolution articulates the Movement’s ownership of and support for the digital emblem project. It will support the Movement components’ involvement in the process and also aims to influence states’ multilateral efforts. The ICRC will continue consulting with states and National Societies in the run-up to the International Conference, including in collaboration with the Australian Red Cross, which will convene a working group of National Societies on the digital emblem to support the project and address outstanding questions. Looking forward, the resolution encourages the ICRC to continue working closely with states and the Movement on a digital emblem. Ultimately, the purpose of the digital emblem is to ensure that the protection that the emblem affords under IHL is adapted to cyberspace and to uphold the effectiveness of the specific protections afforded to digital assets under the existing legal framework.