



CD/07/8.1
Original: English
For decision

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

Geneva, Switzerland
23-24 November 2007

WEAPONS AND INTERNATIONAL HUMANITARIAN LAW

IMPLEMENTATION REPORT ON
RESOLUTION 2 OF THE 2005 COUNCIL OF DELEGATES

Document prepared by
the International Committee of the Red Cross

DRAFT RESOLUTION ON
INTERNATIONAL HUMANITARIAN LAW AND CLUSTER MUNITIONS

Draft resolution sponsored by
the Norwegian Red Cross, the Australian Red Cross, the Canadian Red Cross
Society, the Danish Red Cross, the Lebanese Red Cross Society,
the Netherlands Red Cross, the Red Cross of Serbia, the Swedish Red Cross
and the International Committee of the Red Cross (list to be completed)

Geneva, October 2007

Executive summary

The 2005 Council of Delegates committed the components of the Movement to addressing a range of weapons issues. This report summarizes key developments since 2005 and highlights opportunities for future action in this area. It also provides background for a draft resolution on cluster munitions proposed for adoption by the 2007 Council of Delegates (see annex).

Since 2005, important progress has continued on **reducing the impact of landmines and explosive remnants of war**. More than three-quarters of the world's countries are now party to the Convention on the Prohibition of Anti-personnel Mines, and the Protocol on Explosive Remnants of War entered into force in November 2006. The ICRC and many National Societies have been actively implementing the Movement Strategy on Landmines and Explosive Remnants of War. This includes providing care and assistance to victims and working to prevent incidents and reduce their impact on communities.

In 2006, the third **Review Conference of the Convention on Certain Conventional Weapons (CCW)** approved new measures to promote adherence to the Convention, together with procedures to foster compliance with its rules. In another significant development, the CCW Review Conference saw **growing international momentum to address the humanitarian impact of cluster munitions**, though it was unable to agree on the need for new rules in this area. As a result, the Norwegian government has launched a series of meetings outside the CCW framework among States that are committed to negotiating a treaty on cluster munitions in 2008. The ICRC continues to work towards an urgent solution to the humanitarian concerns posed by cluster munitions. This will include contributing to the strongest possible results both within the framework of the CCW and the Norwegian initiative. In addition, a number of National Societies are promoting national action to address the cluster munition problem.

The **2006 Review Conference of the UN Programme of Action on Small Arms** provided the first opportunity for States to assess progress made on implementing the Programme and to agree further steps. Unfortunately, the Conference could not reach agreement on a final document. Though no additional measures were adopted, States reaffirmed their commitment to fully implement the existing Programme of Action. A number of related normative initiatives are also under way, including work on a possible international arms trade treaty.

The ICRC has continued to promote awareness of the risk that advances in the life sciences may be put to hostile use, and of the need for preventive action by governments, the scientific community and industry. At the **Review Conference of the Biological Weapons Convention** in 2006, States reaffirmed their commitment to the objectives of this treaty and agreed on a series of expert meetings with a view to building coherent preventive measures.

After extensive consultation with government and National Society experts, the ICRC published a *Guide to Legal Reviews of New Weapons, Means and Methods of Warfare* in January 2006. In June 2006, the Guide was presented at a seminar in Switzerland for legal experts from Europe and North America. This was the first in a series of regional workshops to promote the establishment of **legal review procedures for new weapons**, means and methods of warfare and the exchange of information on such procedures.

Introduction

Resolution 2 adopted by the 2005 Council of Delegates stressed that the "*promotion of adequate controls on the development, use and proliferation of weapons is essential to protecting civilians from their indiscriminate use and effects and combatants from unnecessary suffering*". The resolution highlighted specific challenges, together with opportunities for the components of the Movement to promote its humanitarian agenda in this area during the period 2005-2007.

This included three Review Conferences that took place in 2006, on the Convention on Certain Conventional Weapons, the UN Programme of Action on Small Arms and Light Weapons and the Biological Weapons Convention. Components of the Movement were encouraged to raise awareness of these Conferences and of the Movement's priorities regarding their outcomes. The resolution also called for enhanced efforts to minimize the human suffering caused by mines and explosive remnants of war, including cluster munitions. On the one hand, it urged all components of the Movement to promote effective action by States to address these problems, as well as adherence to and implementation of the relevant treaties. On the other, it called on the components of the Movement to increase its own humanitarian activities, by implementing the Movement Strategy on Landmines and Explosive Remnants of War. Finally, the resolution requested components of the Movement to promote the establishment of national procedures for the legal review of new weapons.

This report summarizes the action that the ICRC and National Societies have taken to implement these commitments. It also highlights the most important developments that have occurred since 2005 in relation to each of the themes highlighted in Resolution 2.¹ This includes a section on cluster munitions, an issue that has evolved significantly in this period. In the light of the implications – for international humanitarian law and for the Movement – of the on-going international discussions on cluster munitions, a draft resolution on cluster munitions has been proposed for adoption by the 2007 Council of Delegates. The resolution, which is co-sponsored by a group of National Societies and the ICRC, is attached as an annex to this report.

1. Landmines and explosive remnants of war

Key developments

The international effort to reduce the impact of mines and explosive remnants of war (ERW) has made significant progress since the 2005 Council of Delegates.

Adherence to the Convention on the Prohibition of Anti-personnel Mines (Ottawa Convention) is steadily growing, up from 146 States Parties in September 2005 to 154 by September 2007. These include most States in the Americas, Africa and Europe, as well as 45 mine-affected countries. Two additional States have signed the Convention but not yet ratified it.

¹ During this period, the Movement has continued to fulfill its commitments to address the human cost of the availability, use and misuse of weapons in the Agenda for Humanitarian Action adopted by the 28th International Conference in 2003 (General Objective 2). A comprehensive report on developments related to weapons and international humanitarian law, and action reported by International Conference participants for the period 2003-2007, has been prepared for the 30th International Conference.

All States Parties that possessed stockpiled anti-personnel mines and that are required by the Convention to have destroyed their stockpiles by 2007, have reported – or are expected to report – that they have successfully met this deadline.² As of 1 April 2007, more than 40 million stockpiled anti-personnel mines had been destroyed by States party to the Convention. Mine clearance activities are taking place in most of the 45 States that are Parties to the Convention, and which had reported mined areas or were known to be affected by mines.³ Seven States Parties have so far fulfilled their mine clearance obligations.

States have contributed hundreds of millions of dollars to mine clearance, stockpile destruction, victim assistance and other forms of mine action. Funding levels have so far been maintained at a fairly high level, though this did drop by about six percent from 2004 to 2005, according to the Landmine Monitor. This was the first significant decrease in mine action funding since 1992, and was mainly caused by a significant reduction in funding by the two largest donors. On the other hand, the Landmine Monitor also reported that of the top 20 donors supporting mine action, half increased their funding in 2005.

The adoption of the Protocol on Explosive Remnants of War in 2003 (Protocol V to the Convention on Certain Conventional Weapons) has provided the first systematic framework for minimizing the danger posed by all unexploded and abandoned ordnance. This was an important strengthening of the Convention on Certain Conventional Weapons (CCW) and of international humanitarian law. Having received the requisite 20th ratification in May 2006, the Protocol entered into force and became binding law for those States party to it on 12 November 2006. As of August 2007, the Protocol had been ratified by 32 governments, and many others have declared their intention to do so. Additional ratifications are expected in the months leading up to the First Meeting of States Parties on 5 November 2007.

Following the adoption of the Protocol on Explosive Remnants of War, the CCW Group of Governmental Experts has focused on developing rules that would limit the indiscriminate effects of anti-vehicle mines. Between 2002 and 2006, the Group examined a variety of proposals to improve the rules governing these weapons, including requiring anti-vehicle mines to be detectable and to have self-destruct or self-deactivation features. However, the 2006 Review Conference of the CCW was not able to agree on starting negotiations on a new protocol to regulate anti-vehicle mines. This led 21 States to declare that they would nevertheless implement, as national policy, standards on detectability and limitations on the active life of anti-vehicle mines similar to those proposed in the Group. Although the 2007 Meeting of CCW States Parties is scheduled to reconsider work on this issue, no significant changes in country positions are expected.

While it did not achieve consensus on anti-vehicle mines, the 2006 Review Conference did agree specific measures to promote the implementation of the CCW and universal adherence to it. A plan of action was adopted to promote the Convention and its five Protocols with States that are not yet party to it and a sponsorship programme set up to encourage developing countries to attend future CCW meetings. Following five years' work, the Review Conference was also able to agree on a procedure to assist in the implementation of the Convention's rules and compliance therewith.

Movement action 2005-2007

The Movement Strategy on Landmines (1999) sets out the mine action policy for the components of the Movement. It assigns to the ICRC the lead role concerning mine action activities among the components of the Movement. In 2003, the Council of Delegates

² Article 4 of the Ottawa Convention requires each State Party to destroy its stockpiled anti-personnel mines within four years of the entry into force of the Convention for that State Party.

³ Article 5 of the Ottawa Convention requires each mine-affected State Party to complete mine clearance within 10 years of the entry into force of the Convention for that State Party.

extended the Movement Strategy on Landmines to 2009 and extended the activities listed therein to include explosive remnants of war (Resolution 11).

Since 2005, the components of the Movement have undertaken significant efforts to implement this Strategy. These efforts have included the areas of victim assistance, preventive mine action, and the promotion of legal instruments.

- In the field of care and rehabilitation, the ICRC has provided substantial assistance to victims of mines and explosive remnants of war by supporting or providing surgical services for victims of war and supporting first aid services (often run by National Societies) and by supporting or running physical rehabilitation services in conflict-affected countries. In 2006, the ICRC supported hospitals in 18 countries, and assisted 77 physical rehabilitation projects in 24 countries. This included support to 10 of the 24 States party to the Ottawa Convention with significant numbers of landmine survivors (Afghanistan, Angola, Cambodia, Chad, Colombia, Democratic Republic of the Congo, Ethiopia, Sudan, Tajikistan and Yemen). In four of these countries (Afghanistan, Angola, Cambodia and Ethiopia), the ICRC remains the main international organization providing or supporting such services. The ICRC Special Fund for the Disabled (SFD) helps ensure the continuity of support for physical rehabilitation services by providing technical and material assistance to rehabilitation centres, many of which have previously been supported by the ICRC. This ensures access to services for a large number of mine/ERW survivors. In 2006, the SFD supported 56 projects in 27 countries.
- In 2005, the ICRC Directorate approved a 'Preventive Mine Action Operations Framework' aimed at developing a comprehensive approach to reducing the impact of mines and ERW contamination on civilian populations. This was based on lessons from a decade of preventive activities in the field. It highlights the fact that the Movement has considerable potential for reducing the consequences of weapon contamination, and that this potential goes well beyond traditional awareness-raising activities to include a range of pragmatic measures aimed at preventing incidents and reducing impact. Following the adoption of this framework, efforts have been made to develop and reorient current activities. The ICRC is currently engaged in such activities in around 20 countries. The majority of these are conducted by National Societies, with technical and financial support from the ICRC. They include programmes run by the National Societies of Albania, Angola, Afghanistan, Azerbaijan, Bosnia-Herzegovina, Cambodia, Colombia, India, Iran, Iraq, Jordan, Syria and Tajikistan.
- The ICRC has participated actively in the biannual meetings of the Standing Committees on victim assistance, mine clearance, stockpile destruction and the general status and operation of the Ottawa Convention, and in the annual meetings of States Parties. The most notable outcome of these meetings has been the establishment of a credible and transparent process for decision-making when requests are received for extension of the Convention's mine clearance deadlines. The first of these deadlines are in 2009. States Parties have also adopted a standard declaration to be used by mine-affected States when reporting that they have completed clearance of all mined areas under their jurisdiction or control. These achievements were the direct results of efforts by the ICRC over three years.
- The ICRC has promoted ratification and implementation of the Ottawa Convention and of the CCW, in particular the Protocol on Explosive Remnants of War, through dozens of seminars and workshops at the national and regional levels. This has included the three regional workshops in 2006 and 2007 on mines *and* explosive remnants of war for States of South Asia, the Gulf Cooperation Council and the Maghreb. A variety of materials have been prepared and distributed to ICRC delegations and National Societies for use in their promotion of the Protocol on

Explosive Remnants of War, including ratification kits, brochures and a video. Many National Societies have also worked to promote adherence by their governments to these treaties, including the National Societies of Belgium, Bulgaria, the Republic of the Congo, Colombia, France, Lithuania, Panama, Poland, Sweden, Trinidad & Tobago and the United Kingdom

Future opportunities and challenges

There are many important opportunities for the Red Cross and Red Crescent Movement to continue its efforts to address the humanitarian consequences of mines and explosive remnants of war. Impressive progress has been made, but significant challenges remain.

Under the Ottawa Convention, the mine clearance deadlines of 27 States Parties will fall in 2009 and 2010. At the current rate of mine clearance, many mine-affected States will have difficulty meeting their deadlines. Fourteen of the 27 States have already indicated that they either will or might well have to ask for an extension of their clearance deadline. All components of the Movement should increase their efforts to ensure that mine-affected States do their utmost to meet their deadline in an efficient manner and that a high level of resources is made available for mine action in the coming years. Efforts to promote universalization of the Ottawa Convention must also continue as long as many important stockpiles of anti-personnel mines remain outside the treaty.

Increased adherence to the Protocol on Explosive Remnants of War should also be promoted. Although the main provisions of the Protocol on ERW will apply to future conflicts, the Protocol contains an obligation for States Parties to assist countries already contaminated by ERW from past wars. In November 2007, the first Meeting of States Parties to the Protocol on Explosive Remnants of War is likely to adopt several mechanisms to facilitate the Protocol's implementation. One potentially valuable development is the convening of regular and informal meetings of experts to examine issues related to clearance, victim assistance, risk education, universalization and implementation of the Protocol. Importantly, such meetings would also be a forum to consider how to best assist countries currently affected by ERW. Addressing existing ERW problems would help ensure that the Protocol becomes a dynamic instrument and the central international framework for addressing the humanitarian consequences of unexploded and abandoned ordnance. This is also a strong argument for the components of the Movement to use when encouraging ERW-affected States to adhere to the Protocol and to the CCW more generally.

In implementing the Movement Strategy on Landmines and Explosive Remnants of War, the ICRC and National Societies must continue to enhance the impact of their activities. Clearance based on an effective analysis of the needs is the only real solution for affected communities. The Movement can support this process by gathering data on incidents and other problems caused by mines and ERW and sharing these with organizations involved in clearance and other related activities. Pending the removal of mines or the release of suspected areas, interim activities should be undertaken that will reduce risks for the civilian population and facilitate safe access to food, water and other basic necessities. Victim assistance will remain a long-term need in States that are or have been affected by mines and ERW. In addition to directly supporting the care and rehabilitation of victims, the Movement has an important role to play in mobilizing political will and resources to ensure that the needs of victims are adequately met.

2. Cluster munitions

Key developments

One of the most significant developments since the 2005 Council of Delegates is the growing international momentum to address the humanitarian impact of cluster munitions. Prior to November 2006, efforts to strengthen the international regulation of these weapons had made little progress. However, the massive use of cluster munitions in southern Lebanon and their reported use against northern Israel during the hostilities in July and August of 2006, highlighted the need for urgent action to address their impact on civilian populations and their proliferation.

After years of reluctance to address this issue, 25 countries called for a legally binding instrument on cluster munitions at the 2006 Review Conference of the Convention on Certain Conventional Weapons (CCW). However, with most major powers opposed to starting negotiations at that time, CCW States only agreed to continue to discuss cluster munitions in the Group of Governmental Experts. The Group met in June 2007, but was unable to reach consensus on the way forward. Although several military powers have indicated that they are now willing to negotiate an instrument in the CCW, others remain opposed to such a move. As the Group was unable to reach agreement, it recommended that the Meeting of States Parties in November 2007 decide on how to best address the humanitarian impact of cluster munitions.

In the absence of decisive action on cluster munitions at the 2006 CCW Review Conference, the Government of Norway invited governments that supported the development of new rules on cluster munitions to a meeting in Oslo in February 2007. The Final Declaration of the Conference (supported by 46 States) established several common goals, which include the adoption of a legally binding international instrument prohibiting "cluster munitions that cause unacceptable harm to civilians" by the end of 2008 and establishing a framework for cooperation and assistance for the care and rehabilitation of survivors, the clearance of contaminated areas, risk education, and the destruction of prohibited cluster munitions. A follow-up meeting in Lima, Peru (23 to 25 May 2007), attended by more than 70 countries, began to consider these issues in greater detail. Meetings to continue work on a legally binding instrument are also set to take place in Vienna, Austria (5 to 7 December 2007) Wellington, New Zealand (February 2008) and Dublin, Ireland (May 2008).

In addition to progress at the international level on cluster munitions, an increasing number of countries are taking national action to ensure that their armed forces do not use or acquire cluster munitions that have unacceptable humanitarian consequences. Several have adopted moratoria on the use, production and transfer of cluster munitions (Austria, Hungary, Norway) or enacted national laws banning cluster munitions (Belgium). Other States have adopted or are planning to adopt procurement policies whereby they would only acquire or use cluster munitions with a high reliability or which have self-destruct or self-neutralization features (Argentina, Canada, Denmark, Germany, Poland, South Africa, Switzerland, United States, United Kingdom). Importantly, countries are also removing from service certain types of cluster munition that have caused significant civilian harm or pose a serious risk to civilians due to their high failure rates and inaccuracy (Argentina, Australia, Belgium, Canada, Czech Republic, Denmark, France, Germany, Netherlands, Norway, Poland, Portugal, Switzerland, United Kingdom, United States).

Movement action 2005-2007

The activities that the ICRC and many National Societies have undertaken in the context of the Movement Strategy to reduce the impact of explosive remnants of war, including cluster submunitions, have been described above. In addition, a number of National Societies have been active in raising public awareness of the specific humanitarian concerns related to

cluster munitions and in encouraging their governments to examine national cluster munition policies and to support international regulation of these weapons. The Norwegian Red Cross has played a prominent role within the Movement on this issue. Along with the Lebanese Red Cross, it organized a meeting on cluster munitions in Tyre, Lebanon in early 2007 for National Societies interested in working on the question. The meeting brought together representatives from thirteen National Societies.⁴ Leading up to the Norwegian Government initiative on cluster munitions, the Norwegian Red Cross had organized several national events to raise public and political awareness of the human cost of these weapons and the need for national and international regulation. A number of other National Societies have also worked to raise public awareness, contributed to parliamentary debates and national policy discussions on cluster munitions or developed their own policy positions on this issue. These include the National Societies of Australia, Austria, Belgium, Denmark, Finland, Germany, the Netherlands and the United Kingdom.

The ICRC has participated actively in all international discussions on cluster munitions, both in the framework of the CCW and in the follow-up process to the Oslo Declaration. At the 2006 CCW Review Conference, the ICRC called upon States to immediately end the use of inaccurate and unreliable cluster munitions and to ensure that stocks of such weapons are destroyed and not transferred. Subsequently, it called for the development of an international treaty that would prohibit the use, development, production, stockpiling and transfer of inaccurate and unreliable cluster munitions. Provisions for victim assistance, the clearance of cluster munitions and activities to minimize the impact of these weapons on civilian populations should also be included. In April 2007, the ICRC convened a meeting of experts in Montreux to discuss the humanitarian, military, legal and technical aspects of cluster munitions and the possible solutions. The work of this meeting is being fed into the on-going national and international discussions to address the cluster munitions problem.⁵

Future opportunities and challenges

The cluster munition issue is likely to remain high on both the international and national policy agendas in the coming years. The commitment by some 70 States to conclude an international instrument on cluster munitions by the end of 2008 has growing momentum and an increasing number of governments are aligning themselves with this humanitarian goal. The likely result of this process is the adoption of a new legally binding agreement. The objective of the CCW's work on cluster munitions is less clearly defined. Yet there is a significant possibility that both the process initiated by the Norwegian Government and the CCW could produce instruments in the period 2008 - 2009. The ICRC will continue to work towards an urgent solution to the humanitarian concerns posed by cluster munitions. This will include contributing to achieve the strongest possible results, both within the framework of the CCW and the Norwegian initiative.

Discussions regarding national policy on cluster munitions will continue in many States. Parliaments and civil society will seek clear national policies on the use and procurement of cluster munitions, together with clarification of national positions with regard to the Oslo Initiative and the work of the CCW. Non-governmental organizations are becoming increasingly active on the cluster munitions issue at the national level. National Societies should consider how they can contribute to such national efforts, and how they can encourage their governments to address the humanitarian concerns posed by cluster munitions through participation in the ongoing international discussions.

The Council of Delegates has been expressing its concern about the high human cost of cluster munitions since 2003, when it called for their use in populated areas to be prohibited. In 2005, the Council of Delegates also called on States to eliminate cluster

⁴ The National Societies of Afghanistan, Australian, Colombia, Denmark, Germany, Iraq, Lebanon, the Netherlands, Norway, Palestine, Poland, Serbia and Sweden.

⁵ The report from this meeting is available at: <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/p0915>.

munitions that are inaccurate or have high failure rates. As the civilian suffering and the burden of clearing these weapons continues to grow, it is becoming increasingly urgent for States to act at national and international levels to address this problem. Public awareness and political attention are growing and it is now likely that States will adopt new IHL rules. The components of the Movement can increase the chances of effective new IHL rules being adopted by further increasing public awareness of the humanitarian problems caused by cluster munitions. We can also encourage governments to review policies on cluster munitions at the national level and to support strict new IHL rules at the international level. A resolution on this subject for the Council of Delegates has been prepared by the Norwegian Red Cross, the Australian Red Cross, the Canadian Red Cross Society, the Danish Red Cross, the Lebanese Red Cross Society, the Netherlands Red Cross, the Red Cross of Serbia, the Swedish Red Cross (list to be completed) and the ICRC.

3. Unregulated availability of small arms

Key developments

The first Review Conference on the UN Programme of Action on the Illicit Trade in Small Arms and Light Weapons took place from 26 June to 7 July 2006. Five years after the adoption of the Programme of Action, this was the first opportunity for States to assess progress made and agree on further steps.

Unfortunately, the Review Conference did not even reach agreement on a final document. Despite significant progress made during the last three days of the meeting, several sections of the draft final document remained unresolved when the Conference had to close on 7 July. While this was mainly due to the divergent views of delegations on a number of key issues, the lack of time was also a significant factor. Though no additional measures were agreed, all States participating in the Review Conference reaffirmed their commitment to fully implement the existing Programme of Action. States will also continue to meet every two years to consider the status of implementation of the Programme of Action, with the next biennial meeting scheduled for 2008.

In addition, a number of related global efforts are underway. As part of the follow-up to the Programme of Action, another international instrument was agreed in June 2004 to enable States to more reliably identify and trace illicit small arms. An expert group on illicit brokering of small arms completed its work in June 2006 and has made a number of recommendations on national and international measures that can be taken to prevent illicit arms brokering. Furthermore, an international meeting was organized by Canada in August 2007 to follow up on the specific issue of small arms transfer controls.

Another significant normative initiative is the start of discussions, endorsed by the UN General Assembly, on an international arms trade treaty that would cover all conventional weapons. A Group of Governmental Experts will examine the feasibility, scope and parameters of such a treaty in 2008.

Movement action 2005-2007

In view of the scale of this global problem and its horrific toll in human lives, the ICRC had hoped that the Review Conference would result in a comprehensive plan to accelerate action to prevent the unregulated availability of small arms. Proposed outcomes included endorsement by the Review Conference of common principles for arms transfer decision-making and of the need for an international legal framework to regulate arms brokering

activities, as well as measures to address the unregulated availability of ammunition and to reduce the demand for small arms.

The ICRC participated actively in the Review Conference and in its preparatory work, presenting the Movement's position and recommendations. The ICRC wished to see, in particular, progress towards common arms transfer standards that would include a requirement not to transfer weapons that are likely to be used to commit serious violations of international humanitarian law. In this regard, it proposed that the commitment by the 28th International Red Cross and Red Crescent Conference to make humanitarian law a key criterion for arms transfers (Agenda for Humanitarian Action, Final Goal 2.3) be acknowledged in the outcome document of the Review Conference. The ICRC also urged States to increase their efforts to prevent illicit brokering of weapons into areas where they facilitate violations of international humanitarian law and to limit the unregulated availability of ammunition.

Several National Societies used the period before the Review Conference to raise awareness of the small arms issue and the Movement's position with their governments, media and the general public. In March 2006, the ICRC – with the Norwegian and Canadian Red Cross Societies – held a National Society workshop in Geneva on arms availability and small arms violence. Representatives from 19 National Societies discussed how to prevent small arms violence, advance national policies on arms availability and transfers and promote the Movement's objectives for the Review Conference at the national level.

Future challenges

The 2006 Review Conference on the UN Programme of Action on Small Arms was a missed opportunity to strengthen global efforts to reduce the unregulated availability of small arms. Nevertheless, the lack of agreement on further measures should not divert attention from the urgency of ending the human suffering caused by small arms violence. In the coming years, more attention should be given to (1) implementing existing commitments in this area, (2) supporting other normative efforts aimed at strengthening controls on arms and ammunition and (3) developing practical measures aimed at reducing armed violence. There are a number of avenues by which these objectives are being pursued, and to which the components of the Movement can contribute.

Much remains to be done to implement the commitments that governments have already made in the Programme of Action and within the framework of its follow-up on issues including the marking and tracing of small arms and illicit arms brokering. Continuing regional and sub-regional efforts are also critical. This is where the most substantial progress has been achieved so far, with the adoption of several comprehensive legally binding agreements on small arms control. Ensuring that these regional agreements are not only signed and ratified, but also fully implemented, should be a priority. The Movement should urge States to ensure that existing regional and international commitments in this area are fulfilled.

The ICRC has expressed its support for a global treaty that would regulate international arms transfers, and emphasized that any new instrument should include a requirement not to authorize the transfer of arms that are likely to be used to commit serious violations of international humanitarian law. Components of the Movement should encourage their governments to support such a treaty, and to ensure that one of its key elements is an arms transfer criterion based on humanitarian law. In June 2007, the ICRC published a practical guide for the application of international humanitarian law criteria to arms transfer decisions.⁶ The ICRC and National Societies can use this guide to promote the adoption and implementation of such criteria at national, regional and global levels.

⁶ *Arms Transfer Decisions: Applying international humanitarian law criteria*, ICRC, June 2007. Available at: http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/section_ihl_arms_availability.

Finally, increased attention should be given to practical measures that can enhance the protection of civilians and reduce the devastating impact of the misuse of small arms and of their unregulated availability. This includes reducing the vulnerability of people and communities at risk from armed violence, assisting those that have already become victims, ensuring systematic training in international humanitarian law and human rights law for arms bearers and implementing violence-prevention strategies that address the causes of armed violence in specific settings (this will also be an important focus of the 30th International Conference). By contributing to such efforts, the Components of the Movement can help to ensure that a measurable reduction in the preventable deaths, injuries and suffering resulting from small arms violence is achieved.

4. Biotechnology and weapons

Key developments

The ICRC's appeal on "Biotechnology, weapons and humanity," which was endorsed by the Council of Delegates in 2003, calls for effective controls to ensure that new advances in life sciences and biotechnology are used only for the benefit of humanity and not for hostile purposes. It aims to raise awareness of the responsibility of various groups for ensuring that the existing prohibitions on poisoning and on the deliberate spread of disease are upheld in the face of these new challenges.

Since the Appeal was first made in 2002, advances in the life sciences and biotechnology have fully justified the concerns it expressed. In the same period, governments and others have increasingly come to recognise that the risk of poisoning and the deliberate spread of disease can only be effectively reduced by a multidisciplinary response.

In 2006, the Review Conference of the Biological Weapons Convention succeeded in reaffirming States' commitment to the aims of the treaty. With a view to building coherent preventive measures, the Conference also decided on a series of multidisciplinary expert meetings before the next Review Conference in 2011. The subjects that will be addressed in these meetings include national implementation of the Convention, measures to improve biosafety and biosecurity, adoption of scientific codes of conduct and international cooperation and assistance.

Movement action 2005-2007

The ICRC has continued to raise awareness of the risk that advances in the life sciences may be put to hostile use. As a central part of its strategy to promote the objectives of the Appeal, the ICRC has approached the scientific and health-care communities, together with industry, underlining their responsibility for contributing to an effective "web of prevention". Since 2005, the ICRC has participated in dozens of meetings of eminent scientific associations and academies, to present its concerns and proposals.

It has urged the scientific community, governments and industry to take a variety of measures, including:

- scrutinizing all research with potentially dangerous consequences and ensuring that it is subjected to rigorous and independent peer review;
- adopting professional and industrial codes of conduct aimed at preventing poisoning and the deliberate spread of disease;
- ensuring effective regulation of research programmes, facilities and biological materials that may lend themselves to misuse, and supervision of individuals with access to sensitive technologies;

- supporting enhanced national and international programmes to prevent and respond to the spread of infectious disease;
- incorporating the concerns raised in the Appeal into scientific and medical education.

These messages have in general been well received by the scientific community, many of whose members are unaware that their work might be used for hostile purposes or that rules exist in this area. There are also multiple indications that the messages promoted through the Appeal, in particular the concept of a "web of prevention," have had a significant impact on the legal and diplomatic dialogue related to biological weapons.

The ICRC has continued to promote the "principles of practice" developed in 2004, entitled *Preventing Hostile Use of the Life Sciences: From Ethics and Law to Best Practice*. This document sets out some key principles and action points with the aim of encouraging the life sciences community to incorporate pertinent ethics and laws into their best practice. Together with the arms control organization "VERTIC," the ICRC has also prepared a draft model law, which is intended to help States meet their obligations under the Biological Weapons Convention and subsequent review conferences.

A number of National Societies have pursued a dialogue with their authorities about the concerns raised in the Appeal and included this issue in their dissemination activities. These include the National Societies of Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Ecuador, France, Germany, Iceland, Malaysia, Norway, Poland, Qatar, Sweden, Ukraine and the United Kingdom.

Future opportunities and challenges

As an integral part of its mission to prevent suffering and protect human dignity, the International Red Cross and Red Crescent Movement can help ensure that the life processes at the core of human existence are never manipulated for hostile ends. The landscape is changing rapidly in the domain of life sciences and biotechnology, creating new and increased opportunities for would-be perpetrators to use advances in these areas for poisoning or the deliberate spread of disease.

The messages of the "Biotechnology, weapons and humanity" initiative remain pertinent in the face of new scientific advances in the life sciences and biotechnology. The initiative provides a framework for addressing new and complex technologies – such as nanotechnologies – which, despite their enormous potential, might be of concern in the future. Components of the Movement should continue to engage in dialogue with governments, the scientific community and industry on scientific and technological developments that may have implications for weapons development, and to promote a preventive and collaborative approach, to ensure that such advances are not used for hostile purposes.

5. Legal reviews of new weapons

Key developments

Under Article 36 of Additional Protocol I to the Geneva Conventions, States Parties are required to determine whether the employment of any new weapon, means or method of warfare that they study, develop, acquire or adopt, would be prohibited by international law in some or all circumstances. Furthermore, all States have an interest in assessing the legality of new weapons, whether or not they are party to Additional Protocol I. Such assessments will contribute to ensuring that armed forces can conduct hostilities in accordance with international obligations.

There are still only a small number of States that are known to have formal review procedures for new weapons. Since 2005, the main development in this area relates to the new ICRC Guide for such reviews (see below) and the discussions and exchange of experiences that have been undertaken in this connection.

Movement action 2005-2007

In 2006, the ICRC published a *Guide to the Legal Reviews of New Weapons, Means and Methods of Warfare*⁷ to promote the development of weapons review mechanisms and to assist States that are establishing such procedures. A draft of this guide was first presented at a workshop organized by the Canadian Red Cross and the Government of Canada in February 2005 in Ottawa. This workshop gathered government experts from seven countries. On the basis of comments received at the workshop and in consultation with a number of other government and National Society experts, the ICRC published the finalized text and presented it at an expert seminar in Switzerland in June 2006. This meeting brought together around 40 experts from 21 governments in Europe and North America. Experts from the National Societies of Germany and the Netherlands also participated. The aims were to raise awareness of the obligation to review the legality of new weapons, to exchange experiences on existing review procedures and to encourage the establishment of such mechanisms in States where they do not yet exist.

Future opportunities and challenges

The ICRC will be holding further regional workshops to present the Guide and raise awareness of the Article 36 obligation with States that do not yet have review procedures. In 2008, such workshops are planned to take place in China and in Peru, for Asian and Latin American States respectively.

As noted in the Agenda for Humanitarian Action adopted by the 28th International Conference, legal reviews of new weapons are especially important "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" (Final Goal 2.5). Since 2003, a few States have adopted new weapons review mechanisms and several others are in the process of doing so. The experience already gained by certain States should enable those wishing to adopt relevant measures to set up administrative and legal procedures quickly and efficiently. However, the number is still far too low. The ICRC and National Societies must continue to encourage States that have not yet done so to set up national mechanisms or procedures to determine whether the use of a new weapon, means or method of warfare would be in conformity with international law. They should also be encouraged to exchange information about their review procedures.

⁷ Available at: http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/section_ihl_new_weapons.

DRAFT RESOLUTION

INTERNATIONAL HUMANITARIAN LAW AND CLUSTER MUNITIONS

The Council of Delegates,

Recalling Resolution 2 on Weapons and International Humanitarian Law of the Council of Delegates (Seoul, 16-18 November 2005), and welcoming the ICRC's follow-up report,

Stressing that adequate controls on the use and proliferation of weapons are essential to protecting civilians from their indiscriminate effects and combatants from unnecessary suffering,

Deeply concerned by the human cost of cluster munitions during and after conflicts, and acknowledging the obstacles these weapons pose to post-conflict reconstruction and development,

Expressing its great concern about the indiscriminate effects of cluster munitions and the consequences for civilian populations and humanitarian action, and alarmed by the millions of inaccurate and unreliable cluster munitions in national stockpiles around the world,

Welcoming the ICRC's report on its meeting of experts on the "Humanitarian, Military, Technical and Legal Challenges of Cluster Munitions" held in Montreux in April 2007,

Welcoming the commitment made by States at an international conference in Oslo in February 2007 to conclude an international treaty by the end of 2008 prohibiting cluster munitions that cause unacceptable harm to civilians, and the efforts to address this issue in the context of the Convention on Certain Conventional Weapons,

Welcoming the increasing number of States that have decided to enact a moratorium on the use of cluster munitions that are inaccurate or unreliable and to eliminate such weapons,

- 1 *Encourages* all work currently under way to alleviate the suffering of victims of cluster munitions and to remove submunitions and other explosive remnants of war already contaminating war-affected countries,
- 2 *Urges* the components of the Movement to promote adherence to and full implementation of the Protocol on Explosive Remnants of War of the Convention on Certain Conventional Weapons,
- 3 *Encourages* all components of the Movement to promote national measures to address the humanitarian concerns resulting from the use of cluster munitions, including ending the use and transfer of inaccurate and unreliable cluster munitions, providing assistance to victims, enhancing clearance efforts and eliminating inaccurate and unreliable cluster munitions from national stockpiles,
- 4 *Urges* governments that support the Oslo Declaration to continue their efforts to conclude in 2008 a treaty prohibiting the use, production, stockpiling and transfer of cluster munitions that cause unacceptable harm to civilians,

5 (The Annual Meeting of States party to the CCW will take place in Geneva from 7 to 13 November 2007. If any decision is taken related to cluster munitions, a paragraph may be added here and distributed at the Council of Delegates)

- 5 *Urges* all components of the Movement to raise awareness of the severe human and socio-economic costs of cluster munition use and to help build national support for an effective new treaty of international humanitarian law that will prohibit inaccurate and unreliable cluster munitions,
- 6 *Requests* the ICRC to report to the 2009 Council of Delegates on the progress made in implementing these objectives.