

**Committee on Juridical and Political Affairs  
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**A Review of Challenges and Opportunities Related to Weapons:  
2013-2014**

President of the Committee on Juridical and Political Affairs and Honorable Representative of Bolivia, Ambassador Diego Pary.

Honorable Representatives of Member States

Distinguished Panel Members and Experts of the General Secretariat

Esteemed Ladies and Gentlemen

2013 was an important year for both disarmament and the regulation of arms. From the adoption of the Arms Trade Treaty to the acceleration of the humanitarian initiative on nuclear weapons, the world has witnessed renewed enthusiasm for addressing issues that have long seemed unresolvable.

Yet 2013 also witnessed many concerning developments in the area of arms regulation as well – such as the use of both incendiary and chemical weapons in the Syrian conflict and certain nuclear tests in North Korea.

The purpose of my presentation today is to give a brief overview of some of the main legal developments in the regulation of arms in 2013 – with particular emphasis on new initiatives and what we as the international community should expect to see in 2014

We will start with developments in the CCW and work through chemical, nuclear, cluster, and non-lethal weapons, but first I would like to just say a few words on the ATT to follow up to Dr. Roberto Dondisch Glowinski's excellent overview.

With respect to the text adopted in March of this year, overall the ICRC was pleased at the outcome of the final text. The treaty's preamble explicitly refers to respecting and ensuring respect for IHL and human rights as key 'principles.' It is interesting to note two things about this: first, the reference in the preamble to ensuring respect for IHL is not commonly referred to in treaties other than the Geneva Conventions and Additional Protocol I, and is particularly welcome here as recognition that the ATT's standards for arms transfers flow at least in part from this obligation. Second, the reference to ensuring respect for human rights would appear to be a novelty in international treaty law, and it is certainly a welcome development.

So I will begin with a brief word on the...

**Convention on Certain Conventional Weapons (CCW)**

Despite several years of virtual impasse at the CCW, the meeting of States parties in 2013 resulted in both progress and in innovative ideas for how to move forward on a wide range of

weapons issues. I'm just going to flag three points on this treaty, but I will not go into great detail on any of them.

First, with respect to...

#### Amended Protocol II (Mines, Booby-Traps and Other Devices)

States decided that the April 2014 intersessional meeting of the Amended Protocol would continue to discuss improvised explosive devices, commonly called IEDs, an issue that States have been working on since 2009. Amended Protocol II will primarily focus on exploring the possibility of an information exchange database, ways to further improve stockpile security and promoting cooperation and assistance to strengthen national capacities to address the humanitarian and security concerns raised by the continued use of IEDs.

#### Protocol III (Incendiary Weapons)

Although it was not a specific item on the agenda of the CCW Meeting of States Parties, a number of States took the opportunity to condemn the use of incendiary weapons in Syria. While Syria is not a party to the CCW and as a result is not bound by the rules on incendiary weapons found in Protocol III of the CCW, the ICRC felt it was important for States to recall the very strict treaty and customary law rules regulating any use of incendiary weapons.<sup>1</sup>

But perhaps the most interesting discussions that took place at the CCW this year were those on...

#### Lethal Autonomous Weapons

The CCW agreed to convene an informal expert meeting from 13 to 16 May 2014 to discuss the questions related to lethal autonomous weapons systems (a.k.a. "killer robots").

Overall, the adoption of the mandate on lethal autonomous weapons systems is a significant development for the CCW. The broad support for work on lethal autonomous weapons systems may provide a chance to help reinvigorate for the CCW.

Moving on from the CCW to...

### **Nuclear Weapons**

The ICRC welcomes the fact that in the last two years in various international fora, States have expanded discussions on nuclear weapons beyond narrow security interests to address the humanitarian impact of these weapons. These discussions echo the ICRC's and the International Red Cross and Red Crescent Movement's concerns about the humanitarian consequences of any use of nuclear weapons and the lack of capacity at national and international levels to provide an appropriate humanitarian response to any such use.

The ICRC will continue seizing opportunities created by States themselves (e.g. at the United Nations (UN) open-ended working group and the high-level UN General Assembly (GA) meeting on nuclear disarmament, as well as follow-up to the Oslo Conference, and possibly the NPT review conference's preparatory commission) to engage States and other stakeholders on the humanitarian consequences of nuclear weapons and to call for negotiations to eliminate them.

Looking back at 2013, there were three important inter-governmental meetings that took place on nuclear disarmament:

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<sup>1</sup> Rule 84. If incendiary weapons are used, particular care must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.

1. The Oslo Conference on the humanitarian impact of nuclear weapons convened by Norway in March 2013, ending with an invitation by Mexico to a second follow-up conference in February 2014.
2. A UN Open-Ended Working Group to advance negotiations on nuclear disarmament, established by the UNGA First Committee, met in Geneva in March 2013.
3. A one-day "high-level" meeting of the UNGA on 26 September 2013, whose goal was "to contribute to achieving the goal of nuclear disarmament". The resolution calling for this special session was initiated by Cuba and formally proposed by Indonesia on behalf of Non-Aligned Movement countries.

The ICRC supports all of these State-led efforts to work towards the eventual elimination of nuclear weapons, and hopes to see the efforts of 2013 towards this goal duplicated and even increased in 2014.

### **Cluster Munitions**

The ICRC continues to work towards the elimination of cluster munitions in conjunction with States and the NGO community. In October of 2012, the ICRC and Canadian Red Cross (CRC) jointly testified before the Canadian Senate Committee on Foreign Affairs and International Trade in order to reiterate the Movement's concern with any interpretation of Article 21 of the CCM that would permit continued use of cluster munitions in the name of interoperability.

As some of you may recall, during the negotiation of the CCM, a number of countries expressed concern that their capacity to engage in military cooperation and operations with States possessing cluster munitions would be seriously disrupted in light of the broad prohibitions being proposed for the Convention. More specifically, these States were worried that certain activities that regularly occur in combined military operations could potentially violate the Convention's prohibition on assisting, encouraging or inducing activities prohibited by the Convention.

Article 21 of the CCM is intended to address this concern. This provision allows CCM States Parties to continue to cooperate and engage in military operations with States that are not a party to the Convention even though the latter continue to use, stockpile and transfer cluster munitions. Military cooperation and operations are allowed to go on despite the fact that there is a risk that a CCM State Party due to its role in such operations may be associated with the use, stockpiling and transfer of cluster munitions.

Nonetheless, the ICRC does not believe that it would be within the spirit and purpose of the treaty if national laws allowed for the continued use of cluster munitions by states party. With this in mind the ICRC has taken the following position on how Article 21 should be implemented into national law:

- First, exceptions for interoperability in national legislation should not be overly broad or permit activities that undermine the object and purpose of the Convention and ultimately contribute to the continued use of cluster munitions rather than bringing about their elimination. The goal of the Convention "to put an end for all time to the suffering and casualties caused by cluster munitions at the time of their use, when they fail to function as intended or when they are abandoned" can only be fulfilled when States Parties are working to end the use by non-party States, including in the context of military cooperation and operations.

- Second, in the view of the ICRC, Article 21 was never intended to leave military cooperation and operations unaffected. Although the article recognizes that military cooperation and combined operations with non-party States can continue, it also seeks to ensure that the humanitarian goals of the Convention are not undermined through such cooperation. This is reflected firstly in the list of activities prohibited to a State Party in all circumstances, as seen in paragraph 4 of Article 21, and also in the treaty's requirements that each State Party promote the norms of the Convention and use its best efforts to discourage other States from employing cluster munitions.

The ICRC welcomes the fact that additional States became party to the CCM in 2013, including Bolivia, and the ICRC hopes this trend will continue in 2014 and beyond.

I will now address a few legal developments related to the use or development of...

### **Toxic chemicals as weapons for law enforcement**

#### Incapacitating Chemical Agents

The ICRC has witnessed an increasing interest among military and law enforcement agencies in the use of certain toxic chemicals as weapons, particularly dangerous anaesthetic drugs. The aim of these weapons – so-called “incapacitating chemical agents” – would be to render people unconscious or incapacitated by severely impairing brain function.

These “incapacitating chemical agents” are toxic chemicals under the Chemical Weapons Convention (CWC). They are not riot control agents (aka ‘tear gas’). Riot control agents are a distinct sub-category of toxic chemicals that are permitted under the CWC for “law enforcement including domestic riot control purposes” and are characterised by their *temporary* effects.

The ICRC held two international expert meetings – in March 2010 and April 2012 both in Montreux – to explore the implications of the use of so called “incapacitating chemical agents”. More recently, on 6 February 2013, the ICRC published its position, stating that the use of toxic chemicals as weapons for law enforcement should be limited to riot control agents only. This reflects the overwhelming practice of all States to date. The position is also supported by the highly constraining international legal framework on chemical weapons.

In addition to the law, the ICRC position is based on an assessment of the following significant risks:

- Risks to life and health: When used as weapons these chemicals present a significant risk of death for those exposed, and permanent disability for survivors, such a brain damage.
- Risks of undermining international law prohibiting chemical weapons: Some of these chemicals are as toxic as chemical warfare agents, such as nerve agents. Their development and use runs against the object and purpose of CWC.
- Risks of creating a ‘slippery slope’ towards the reintroduction of chemical weapons in armed conflict: Especially in blurred, changing or disputed situations where law enforcement and conduct of hostilities occur at the same time, there is a concern that the use of “incapacitating chemical agents” during a law enforcement operation could escalate into their use during armed conflict.
- In armed conflict the use of any toxic chemicals as weapons would constitute the use of chemical weapons, which is absolutely prohibited by international humanitarian law

- Outside armed conflict, the highly constraining legal framework (Chemical Weapons Convention, Biological and Toxin Weapons Convention, international drug control treaties, and international human rights law) supports the position that riot control agents are the only toxic chemicals that should be used for law enforcement.
- The ICRC is aware of the different views about what is permitted under the CWC's provision for "law enforcement including domestic riot control", but it is the ICRC's position that the intent of the negotiators was only to permit the use of riot control agents, and this is reflected in virtually all State practice to date. This is the position that is most in keeping with the object and purpose of the treaty.

The ICRC's objective for 2014 is for all States to verify and articulate a national policy of 'riot control agents only' for law enforcement purposes, and ensure that they have legislation to that effect. The ICRC also encourages States to promote this approach at the international level and begin formal discussions to clarify this issue among States Parties to the Chemical Weapons Convention within the framework of the Organization for the Prohibition of Chemical Weapons (OPCW).

## **CONCLUSION**

This has been quite a cursory overview of a number of legal developments in arms control law in 2013, but hopefully it has flagged many of the important issues that we should all be looking at in 2014. In 2014, the ICRC hopes to see the CCW reinvigorated with new initiatives, to see renewed enthusiasm in the international efforts to work towards the elimination of nuclear weapons, to see positive legal developments in the area of non-lethal weapons, and to witness further ratifications of a variety of arms treaties including the CCM and Landmine Conventions.

I hope this overview has been helpful and I'm happy to answer any questions after the session. Thank you for your attention.