

**REPORT**

**INTERNATIONAL CONFERENCE**  
**THE CONVENTION ON**  
**CERTAIN CONVENTIONAL**  
**WEAPONS**

**5-6 DECEMBER 2017**  
**PRAVASI BHARATIYA KENDRA, DELHI**



**ICRC**



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*The views and opinions  
expressed in the publication do  
not necessarily represent those  
of the International Committee  
of the Red Cross (ICRC)*

### **Planning Committee**

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International Law

International Committee of  
the Red Cross

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Maldives.

### **Jeremy England**

Head of Regional Delegation

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## INTRODUCTION

The International Conference on the Convention on Certain Conventional Weapons (CCW) was co-hosted by the International Committee of the Red Cross (ICRC) and the Indian Society of International Law (ISIL), with support from the Ministry of External Affairs (MEA), Government of India, from 5 to 6 December 2017 in New Delhi, India. This was the first conference focussed on the CCW to be held in Asia in the last decade. The goal of the conference was to further understanding of the scope and content of the convention and its protocols as well as to discuss current issues on the CCW's agenda. The conference aimed to facilitate increased adherence to the Convention, the full implementation of its provisions and participation in future CCW meetings.

To fulfil these objectives, the conference provided participants the opportunity to share a range of legal, military and humanitarian perspectives on the following topics:

1. An overview of the CCW and its protocols
2. The CCW from military perspective, policy and practice
3. The impact of landmines and explosive remnants of war (ERWs)
4. The CCW's work on improvised explosive devices (IEDs)
5. The CCW's work on autonomous weapons systems (AWS)
6. Other conventional weapons of humanitarian concern: anti-vehicle (AV) mines and incendiary weapons
7. Institutional support on CCW adherence and implementation

The conference drew a total of 83 participants from 24 States covering South Asia, East Asia, Iran, the Gulf region and East Africa, as well as experts from four international organisations namely the Asian African Regional Consultative Organization (AALCO), the Geneva International Centre for Humanitarian Demining (GICHD), the South Asian Association for Regional Cooperation (SAARC), the United National Office of Disarmament Affairs (UNODA). The conference also saw representatives from the Institute of Defence Studies and Analyses (IDSA), the ISIL and the ICRC.

Discussions were held under Chatham House rules, and the report has been developed in keeping with this undertaking with the support and consent of participating States and international institutions. It does not attribute views expressed during the substantive sessions of the conference to individual participants and is without prejudice to their national positions.

The report is divided into following sections:

Part I: Remarks made at the inaugural dinner and the opening session of the conference.

Part II: Presentations made by participating States and international institutions. The section covers group discussions and remarks made at the concluding session.

Part III: Agenda and the list of participants.

Annex I: Background papers with guiding questions circulated to participants in preparation of the conference.



## PART I

### INAUGURAL DINNER

#### **Ms Christine Beerli**

*Vice President, International Committee of the Red Cross (ICRC)*

Ms Beerli began by acknowledging the efforts of the Ministry of External Affairs, Government of India and the ISIL leading to the International CCW Conference. She noted that the conference had successfully brought together 24 State representatives from South Asia, East Asia, Iran, the Gulf region and East Africa. She affirmed that the ICRC values the relationship and cooperation it shares with all these countries. She noted the significant contributions of the participating international institutions towards improving the respect for International Humanitarian Law (IHL).

She commended India's role in engaging with various groupings of States at international forums to ensure that voices from the developing world are represented and the development of international law remains an inclusive process. She stressed that the ICRC remains equally committed to such an approach. She concluded by saying that the International CCW Conference is one of ICRC's landmark events in 2017, regionally and globally.

#### **General (Retd.) Dr V K Singh**

*Minister of State for External Affairs, Government of India*

The Minister began by stating that India has had a long standing commitment to the CCW, having ratified the treaty in 1984. He stated that India has consistently engaged with the CCW and accords high priority to its full and effective implementation. The conference is therefore a reflection of India's tremendous faith in the Convention to further progressive controls over certain categories of conventional weapons through international consensus and cooperation.

He said that the international community faces the grim reality of war and hostilities and dealing with this challenge requires collaborative and cooperative mechanisms. He added that India believes that the CCW remains the only universal forum at the moment, which brings together a broad spectrum of stakeholders. India strongly supports the universalisation of the CCW and he hoped that the discussions in the ensuing days would open the way for new ideas. He added that India's commitment to the CCW framework has evolved from that of a staunch supporter, to an enthusiastic contributor and now to that of a sponsor. He noted that the CCWs voluntary and autonomous nature and its member-driven character is in sync with India's ideology of multilateralism and reiterated support for the CCW compliance mechanism. He concluded by saying that India remains dedicated to working with all relevant stakeholders, to strengthen the CCW framework and to make it robust and effective.

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1. The full text of Minister V.K. Singh's speech is available at [http://www.mea.gov.in/Speeches-Statements.htm?dtl/29158/Welcome\\_Address\\_by\\_Gen\\_Dr\\_V\\_K\\_Singh\\_\(Retd\)\\_Minister\\_of\\_State\\_for\\_External\\_Affairs\\_at\\_International\\_Conference\\_on\\_the\\_Convention\\_for\\_Certain\\_Conventional](http://www.mea.gov.in/Speeches-Statements.htm?dtl/29158/Welcome_Address_by_Gen_Dr_V_K_Singh_(Retd)_Minister_of_State_for_External_Affairs_at_International_Conference_on_the_Convention_for_Certain_Conventional).

## OPENING SESSION

### **Ms Ruchi Ghanashyam**

*Secretary, Ministry of External Affairs, Government of India*

Secretary Ghanashyam welcomed all participants to the conference and expressed her appreciation to the ICRC and ISIL for their efforts in the organisation of the CCW conference. She noted that India has been an active supporter of the CCW framework and has a common interest in promoting the Plan of Action on Universalisation to enable the convention achieve its goals. The CCW is a dynamic instrument, which has demonstrated its continued relevance to the emerging needs in a balanced manner. She noted that India has ratified all the five protocols annexed to the convention, including Amended Article 1, and is committed to its full implementation.

She emphasised that as a leading contributor to the UN peacekeeping operations, India is deeply aware of and engaged with the myriad threats posed by armed conflict. India supports the vision of a world free from the threat of landmines and has extended assistance to international demining and rehabilitation efforts upon request. She also shared that India is alarmed by the proliferation of improvised explosive devices (IEDs) and fully partakes in the productive work taking place in this arena under the aegis of the CCW Amended Protocol II. Lastly, she noted that the CCW as a forum has kept pace with rapid technological developments in the field of weaponry, demonstrated by the Group of Governmental Experts (GGE) on Lethal Autonomous Weapon Systems (LAWS). She concluded by wishing the participants successful and productive deliberations at the conference.

### **Dr E M S Natchiappan**

*President, Indian Society of International Law (ISIL)*

Dr Natchiappan welcomed the participants and acknowledged the close collaboration the ISIL and the ICRC have shared over time to work on the promotion of IHL. He noted the importance of the CCW as an IHL instrument, and its relevance in protecting civilians from the effects of hostilities. He affirmed that the ISIL would give priority to achieving universalisation of the CCW and its protocols and added that ISIL is eagerly looking forward to the outcome of this conference to frame future interventions on this important topic.

### **Ms Christine Beerli**

*Vice President, International Committee of the Red Cross (ICRC)*

Vice President Beerli congratulated India for its leadership role in the work of the CCW, demonstrated by its successful chairing of the CCW's GGE on LAWS in November 2017. She affirmed that India is leading by example, having adhered to all five protocols of the CCW and reporting annually on its national implementation measures.

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2. The full text of Secretary Ghanashyam's speech is available at [http://www.mea.gov.in/Speeches-Statements.htm?dtl/29159/Keynote\\_Address\\_by\\_Secretary\\_West\\_at\\_International\\_Conference\\_on\\_the\\_Convention\\_for\\_Certain\\_Conventional\\_Weapons\\_CCW\\_New\\_Delhi\\_December\\_05\\_2017](http://www.mea.gov.in/Speeches-Statements.htm?dtl/29159/Keynote_Address_by_Secretary_West_at_International_Conference_on_the_Convention_for_Certain_Conventional_Weapons_CCW_New_Delhi_December_05_2017).

Ms Beerli noted that the CCW derives from the 1977 Additional Protocols to the Geneva Conventions, which further developed IHL in response to new trends in warfare. The CCW establishes a framework to limit or prohibit the use of specific weapons based on the fundamental IHL rules to protect civilians against indiscriminate attacks and combatants against inhumane means and methods of warfare. She stated that the ICRC was closely involved in the processes that led to the adoption of the CCW and its protocols, consonant with its long-standing role to promote the strengthening of IHL to better protect the victims of armed conflict. She added that as a neutral, independent and impartial humanitarian organisation, the ICRC's concern with certain weapons is strictly humanitarian. She concluded by stating that the ICRC continues to work for universal adherence to the CCW and all of its five protocols, and calls on all States to ratify or accede to these instruments at the earliest.



(L-R) Jeremy England, Head of Regional Delegation, ICRC New Delhi, Ms Christine Beerli, Vice President, ICRC and General (Retd.) Dr V K Singh at the cultural programme on the eve of the International Conference on the Convention on Certain Conventional Weapons.



A dance troupe performs during the cultural programme organised on the eve of the International Conference on the Convention on Certain Conventional Weapons.



Participants register for the International Conference on the Convention on Certain Conventional Weapons.



Participants from 24 States at the International Conference on the Convention on Certain Conventional Weapons.





Participants representing South Asia, East Asia, Iran, the Gulf region and East Africa attend the International Conference.



(L-R) Ms Christine Beerli, Vice President, ICRC, Jeremy England, Head of Regional Delegation, ICRC New Delhi, Dr E M S Natchiappan, President, ISIL and Ruchi Ghanashyam, Secretary (West) MEA at the opening session.

## PART II

### SESSION 1

## AN INTRODUCTION TO THE CONVENTION ON CERTAIN CONVENTIONAL WEAPONS

### **The CCW and International Humanitarian Law**

#### **The CCW today: The state of ratification and implementation**

The speakers provided a broad overview of the 1980 Convention on Certain Conventional Weapons (CCW) and its protocols. They placed the CCW in the context of International Humanitarian Law (IHL) providing a historical background of the convention and reviewed the state of its ratification and implementation.

The session introduced IHL as a set of rules that seeks to prevent and reduce human suffering in times of armed conflict. It does so through the rules on conduct of hostilities that protect persons who are not or no longer participating in hostilities and by restricting the choice of means and methods of warfare. Underlying the rules of IHL is a balance between the principles of humanity and military necessity.

The progression of IHL norms covering weapons can be traced back to the 1868 St. Petersburg Declaration, which underlined the limits at which the necessities of war must yield to the requirements of humanity and that the only legitimate objective during war is to weaken the military forces of the enemy. This important principle was reinforced in other treaties including the Hague Regulations of 1899 and 1907. Additional Protocol I of 1977 to the Geneva Conventions articulated the fundamental principle, stating, “the right of parties to the conflict to choose means and methods of warfare is not unlimited”. In addition to the general rules of IHL governing the conduct of hostilities, there are also specific rules in treaties and in customary IHL that prohibit the use of certain weapons. Even if no specific rule applies to a specific case, it remains governed by the principles of humanity and the dictates of public conscience (also known as the Martens Clause).

The general rules of IHL relevant to the development and use of any weapon include the prohibition of indiscriminate attacks and the prohibition to use weapons of a nature that cause superfluous injury or unnecessary suffering. The International Court of Justice (ICJ), in its advisory opinion on the ‘Threat or Use of Nuclear Weapons’, stated that the lawfulness of any weapon can be tested against these general rules. Further, Article 36 of Additional Protocol I requires States to carry out legal review of any new weapons they develop or acquire, to ensure that they can be used in accordance with IHL.

The CCW grew out of the diplomatic conferences which adopted the 1977 Additional Protocols to the Geneva Conventions of 1949. The ICRC was requested by the diplomatic conferences to convene expert meetings to examine conventional weapons that cause unnecessary suffering or have indiscriminate effects. After the ICRC reported back to

the diplomatic conference, which decided that specific conventional weapons should be discussed in the context of the UN, resulting in the launch of the CCW process.

The CCW comprises a framework convention and five protocols that prohibit or restrict the use of conventional weapons considered excessively injurious or whose effects are indiscriminate. Protocols I – IV prohibit or limit the use of certain weapons. Conversely, Protocol V does not prohibit or limit the use of any weapon, rather, it requires that a range of measures be taken before, during and after active hostilities, in order to protect civilians from the impact of unexploded and abandoned ordnances.

**The Framework Convention (1980):** The Framework Convention contains general provisions on its scope of application. It also contains provisions on its entry into force, meetings of State Parties and procedures for review and amendment. Article 1 of the Framework Convention covering the scope of application was amended on 21 December 2001 to extend the application of the convention and its protocols to situations of non-international armed conflict (NIAC).

**Protocol I (1980):** Prohibits weapons whose primary effect is to injure by fragments not detectable by X-ray. This is in direct application of the prohibition on weapons of a nature to cause superfluous injury or unnecessary suffering.

**Protocol II (amended 1996):** Restricts the use of landmines, booby traps and other devices. Protocol II was amended in 1996 in response to the humanitarian consequences of anti-personnel (AP) mines. The amended version strengthened existing rules on the use of mines, booby traps and other devices and the design of anti-personnel mines. It also included measures that must be taken to reduce the impact of these weapons at the end of active hostilities.

Amended Protocol II contains general rules on AP mines and anti-vehicle (AV) mines, booby traps and other devices. Mines refer to munitions placed under, on or near the ground designed to be exploded by presence, proximity or contact of a person or vehicle.

It provides the following specific rules on AP mines:

- they must be detectable;
- if remotely delivered, they must be capable of self-destruction and self-deactivation; and
- if not remotely delivered, they must also be capable of self-destruction and self-deactivation unless they are used in a perimeter marked and monitored area and cleared before the area is abandoned.

For many States, the restrictions on AP mines imposed by Amended Protocol II were insufficient to address the humanitarian crisis caused by such mines, therefore, they adopted the Anti-Personnel Mine Ban Convention or APMBC in 1997 (also known as the Ottawa Treaty).

Regarding AV mines, Amended Protocol II is the only international treaty that regulates their use. However, the rules on their use are less stringent than for AP mines. For



example, the requirement for AV mines to self-destruct and self-deactivate is subject to “feasibility”. However, as AV mines in conflict areas have a severe impact on civilian populations and hamper the delivery of humanitarian aid and reconstruction, the ICRC has called for stricter regulations.

The CCW Protocol II defines a booby trap as a device designed to kill or injure when a person disturbs or approaches an apparently harmless object. There is a prohibition to attach booby traps to a range of items including medical equipment, toys as well as food and drinks.

**Protocol III (1980):** Restricts the use of incendiary weapons.

- it defines incendiary weapons as those primarily designed to set fire to objects or to cause burn injuries to persons through the action of flame, heat, or a combination thereof. This includes, for example, flame-throwers and munitions containing napalm. The definition excludes munitions that may have incidental incendiary effects such as tracers, illuminants and smoke or signalling systems such as white phosphorous;
- it prohibits making the civilian population, such as individual civilians or civilian objects, the target of attack by incendiary weapons;
- it prohibits the use of air delivered incendiary weapons against a military objective located in a concentration of civilians; and
- it prohibits the use of incendiary weapons against forests or other kinds of plant cover unless they are used to conceal combatants or military objectives.

**Protocol IV (1995):** Prohibits the use of blinding lasers.

- it prohibits the use and transfer of laser weapons specifically designed to cause permanent blindness; and
- for the second time in history, this prohibited a weapon even before it had been deployed in the battlefield.

**Protocol V (2003):** This does not address any specific weapons but covers measures to reduce the impact of explosive remnants of war (ERWs) on civilians which includes unexploded or abandoned ordnance.

- it requires parties to the conflict to mark and fence, warn civilians and clear ERW affected areas under the party’s control;
- it requires the user to provide assistance for clearance in a territory it does not control;
- it requires the user to record information on the use of explosive ordnances to facilitate marking and clearing afterwards. Such information is shared with the party in control of the affected territory directly or through a mutually agreed third party or with humanitarian mine clearance organisations; and

- States in a position to do so, must provide assistance for clearance and assist victims. It also outlines the right of High Contracting Parties to seek and receive such assistance.

The convention sets forth implementation measures and requires the High Contracting Parties to disseminate the provisions of the CCW to its armed forces, adopt implementing legislations including, to prevent and suppress violations. They also require that High Contracting Parties to file annual compliance reports. There are informal multidisciplinary and multi-stakeholder platforms to receive implementation support from institutions such as the ICRC, the CCW Implementation Support Unit, UNODA, the Geneva International Centre for Humanitarian Demining (GICHD) and other civil society organisations.



Bantan Nugroho, Head, CCW Implementation Support Group, UN Office for Disarmament Affairs, speaks on 'CCW today: The state of ratification and implementation' during the first session.



Kathleen Lawand, Head of Arms Unit, ICRC, speaks on 'The CCW and International Humanitarian Law' during the first session.



The conference drew participants from international organisations.

## SESSION 2

# THE CCW FROM MILITARY PERSPECTIVE, POLICY AND PRACTICE

### What the CCW requires of armed forces

#### CCW implementation in the armed forces

This session focussed on understanding the measures that the armed forces must take to ensure CCW implementation. The speakers noted that the CCW is a dynamic convention that allows for progressive development. It then provided an overview of the requirements of the military in relation to each protocol of the CCW. Protocol I prohibits weapons using non-detectable fragments, whereas Amended Protocol II, adopted in 1996, covers inter alia mines, anti-personnel (AP) mines, remotely delivered AP mines, booby traps and other devices and mines other than AP Mines. It also has provisions on their recording, marking and removal and protection of the civilian population and places far more constraints on the military than the original Protocol II, adopted in 1980. The Anti-Personnel Mine Ban Convention (APMBC) prohibits all AP mines and therefore, Amended Protocol II provides a baseline for States that are not party to the APMBC. Amended Protocol II also addresses anti-vehicle (AV) mines and non-victim operated devices, which are not covered by any other convention.

CCW Protocol III on incendiary weapons poses a challenge to the armed forces because it requires separating military objectives from concentrations of civilians which can be very difficult during active hostilities. There still exists a need to educate troops about the CCW Protocol IV which covers blinding laser weapons. Even though the CCW Protocol V on explosive remnants of war deals largely with post-conflict measures, it does impose obligations on militaries. In particular, under Article 4, militaries are under an obligation to record the use of explosive ordnances during active hostilities to the extent feasible. However, in practice this is a particularly difficult task, especially with regard to light infantry weapons such as hand grenades and small mortars. Generic preventive measures are set out in the technical annex to Protocol V, which contains suggested best practices to address issues such as manufacture, storage and transport of munition stockpiles.

With respect to dissemination, under Article 6 of the Framework Convention, High Contracting Parties undertake dissemination activities in peacetime as well as in times of armed conflict, including the study of programmes of military instruction, so that such instruments may become known to their armed forces. Similarly, Article 14 (3) of Amended Protocol II requires that High Contracting Parties issue relevant military instructions and operating procedures and that the armed forces personnel receive training to comply with the protocol. Additionally, Article 11 (1) of Protocol V requires that armed forces issue operational procedures and instructions and that armed forces personnel receive training consistent with the relevant provisions of the protocol. A number of examples were elaborated during the session to demonstrate the impact of the convention in complying with the prohibitions and restrictions on AP mines, the protection of UN peacekeepers and the protection of civilians through the recording, marking and clearance of unexploded or

abandoned ordnances after the end of active hostilities. The speakers also touched upon processes initiated under the CCW framework on mines other than anti-personnel mines (MOPATM) from 2004-06 and on cluster munitions from 2007-11, but such processes were unsuccessful in reaching an agreement.

Describing experiences from the Philippines, a speaker noted that having ratified Protocols I, II, III in 1996 and IV in 1997 and taking into consideration it is yet to sign Protocol V and Amended Protocol II, the Philippines has no stockpiled mines and no mined areas under its jurisdiction. A continuing challenge for the security sector is that non-state actors use homemade components and unexploded ordnances such as mortar and artillery shells to build improvised explosive devices (IEDs). It was reported that the Mindanao and Marawi conflicts have led to more than 1000 casualties, including, over 40 civilians. An additional challenge for the Government of the Philippines is the changing operational environment, for example, in Marawi, military operations are conducted in urban areas requiring additional training in urban warfare. Comprehensive clearance and disposal activities are necessary to ensure IEDs and unexploded ordnance (UXOs) do not end up in the hands of the “insurgents”. The armed forces are therefore tasked with disposing IEDs, used by the “insurgents” and UXOs used by both government forces and “insurgents”. Considering that the Philippines has yet to ratify all the CCW protocols, this is an example of good practice as to how the government has adhered to the norms contained in the CCW Protocols (I to V) to address serious post conflict humanitarian problems.

It was highlighted that Sri Lanka ratified all the protocols of the CCW in 2004, except Protocol V. This has led to prohibitions on AP mines and booby traps under domestic law. However, a small number of these weapons are retained for training purposes. The speaker noted that CCW implementation includes framing standard operating procedures which cover training on the CCW for all ranks. A challenge in Sri Lanka relates to the use of IEDs, land and sea mines by non-state actors and a decentralised system of recording the use of AP mines. The contributions made by international organisations and similar agencies was also noted since they have more opportunities to engage with non-state actors. International agencies maintain their neutrality and find ways to influence non-state actors to respect CCW obligations.

An overarching challenge which emerged from the discussions was the asymmetric nature of warfare because there is no accountability or guarantee from non-state actors that they will abide by the convention. Due to this reason some participants felt that State actors have a limited course of action in such situations.

The discussions went on to address the continued justification for the use of AP mines in military operations highlighting that many States are yet to join the APMBC. It was observed that their military utility is outweighed by the adverse humanitarian impact which supports the prohibition of AP mines. There are concerns that the use of improvised AP mines has increased even though the manufacturing of such mines has declined. The importance of education and outreach programmes on AP mines, especially to non-state armed groups (NSAGs) was emphasised to address this issue, but it was acknowledged that in practice, it is a challenging task.



(L-R) Major General Mervyn Suneth Perera, Sri Lankan Army, Brigadier General Md. Israt Hossain, Armed Forces Division, Ministry of Defence, Bangladesh, Lt Colonel Jum Burke, Irish Defence Forces, Colonel Alejandro Manalo, AFP Munitions Control Centre, Ministry of Defence, the Philippines discussing 'The CCW from military perspective, policy and practice'.



Participants at the session on 'The CCW from military perspective, policy and practice'.





Lt Colonel Jim Burke, Irish Defence Forces speaks on 'What the CCW requires of Armed Forces'.



Participants attend the second session at the first conference focussed on the CCW to be held in Asia in the last decade.



## SESSION 3

### STATE VIEWS ON THE CCW

This session provided an opportunity for participating States to exchange views on the issues raised in sessions 1 and 2.

Participants testified that landmines and explosive remnants of war (ERWs) remain a painful legacy of conflict in their countries. Even after hostilities have ceased, ERWs continue to adversely affect the civilian population. States shared their vision of being free of mines in a time bound manner and commended the role played by regional bodies such as the ASEAN Regional Mine Action Centre (ARMAC). States expressed the hope that the CCW would continue to be an important platform in this regard.

Questions about a centralised body that can pool information to match needs of States facing weapon contamination with offers of technical and financial assistance from other States were raised. To this, the experts responded that although there is no expressly designated body for this purpose, the CCW meetings of State Parties and secretariat provide such support, creating a de facto community of cooperation based on the CCW's requirements for international cooperation and assistance.

Regarding the ICRC's guidance and support on accession/ratification to the CCW and its protocols, experts shared that the ICRC's legal advisory service supports States implement their legal, technical and military obligations under IHL treaties including the CCW. To this end, the ICRC has produced ratification kits in all UN languages along with model legislation that could serve as a guide for developing domestic legislation. In addition to this, other organisations such as the Geneva International Centre for Humanitarian Demining (GICHD) also offers support towards treaty ratification. Noting the challenges highlighted in the previous sessions, discussions about non-state armed groups' (NSAGs) compliance with the CCW was also addressed. It was noted that NSAGs are also bound by the CCW's norms as the convention applies in non-international armed conflicts (NIAC) through Amended Article 1 of the framework convention. The speakers emphasised the importance of dialogue with NSAGs to ensure respect for the CCW and other norms of IHL, as is done by the NGO, Geneva Call. It was recalled that under Common Article 3 of the Geneva Conventions, the application of IHL does not affect the legal status of parties to the conflict and therefore, States retain the authority to prosecute NSAGs under domestic law.

Considering the responsibility of parties to the conflict to clear unexploded ordnances under CCW Protocol V, the user has a number of obligations even if the ERWs are not present in the territory under its control. The user is required to record information on the explosive ordnances used and after the cessation of active hostilities, to the extent feasible, share this information with the party that controls the territory in order to facilitate clearance. Moreover, the user must, to the extent feasible, provide assistance in ERW removal directly to the party in control of the territory. Aware that following a conflict, a conflictual relationship between States may not be conducive to such interactions, Article 7 of CCW Protocol V provides that States can provide their assistance through other High Contracting Parties or international organisations.



A participant makes a remark during the session on 'State Views on the CCW'.



A participant from the ICRC raising a point during the interaction.

## SESSION 4

### ADDRESSING THE IMPACT OF LANDMINES AND EXPLOSIVE REMNANTS OF WAR (ERWs)

This session highlighted the humanitarian consequences of landmines and ERWs. The discussions also brought up examples of how affected States are currently dealing with them and the IHL rules to prevent and reduce their impact.

The discussions began by noting that Afghanistan is heavily contaminated by ERWs and landmines which has a serious humanitarian impact, accounting for some of the highest civilian casualties in the world. The Government of Afghanistan has taken a range of measures to address this by providing mine risk education and facilitating the clearance of mines and ERWs. In general, contaminated areas have been classified into two categories, the first is legacy contamination (which dates to the pre-2001 period) and new contamination (covering the post-2001 period). In this regard, the government regularly conducts surveys to identify contaminated areas. The US Department of Defence is one of the main donors to fund such clearance activities. To date, over 19 million devices have been destroyed through clearance activities, a success story for Afghanistan. Most clearance and risk education programmes are implemented by civil society organisations.

In Afghanistan, while the overall trend has shown a decrease in civilian casualties, since 2015 this trend was reversed by a marked increase owing to the use of ERWs and IEDs. In fact, 48% of civilian casualties are a result of civilians being unable to distinguish unexploded or abandoned ordnances from the metal scrap they collect for economic purposes.

In addition to fatal consequences for civilians, weapon contamination also has an adverse impact on post-conflict development. It negatively impacts the soil, water and air affecting the environment and health of the local communities. Afghanistan is severely impacted due to its pre-dominantly agricultural economy. Other challenges in Afghanistan relate to the ongoing situation of conflict and insecurity which has led to demining personnel suffering serious injuries and the lack of ordnance records which has impeded clearance efforts.

The ICRC supports mine and ERW clearance in Afghanistan and a number of other affected countries. Its work in this area is related to its mandate to protect civilians from the effects of hostilities. The ICRC is the lead organisation in the Red Cross Red Crescent Movement to address weapon contamination.

The ICRC plays a role in every phase of a conflict. The speakers highlighted the benefits of increasing population resilience and the need to support communities where ERWs are used. It is well-known that if clearance activities to remove ERWs are not undertaken, members of the local community will put themselves and others directly at risk by dealing with the problem on their own. Even if they manage to remove ERWs, but may not be able to destroy them and may end up abandoning them in another location, creating a risk for others in the community.

There are several international treaties that seek to address the impact of landmines and ERWs. Amended Protocol II of the CCW is an important instrument in this regard as it

contains a range of general restrictions on the use of mines, booby traps and other devices, elaborated in Article 3 of the protocol.

More specifically,

- it is prohibited to direct these weapons against civilians or civilian objects or to use them indiscriminately;
- it is prohibited to use such weapons, if they are of a nature to cause superfluous injury or unnecessary suffering;
- it is also prohibited to use any mine, trap or other device which detonates in the presence of metal detectors; and
- all feasible precautions must be taken to protect civilians from the effects of such weapons.

In addition, all AP mines must be detectable and all remotely delivered mines must have self-destruction and self-deactivation features. The use of emplaced AP mines without self-destruct and self-deactivation features is prohibited unless such mines are placed in a perimeter marked area, monitored by military personnel and are cleared before the area is abandoned.

It is also notable that in addition to the restrictions on use, the protocol also has rules on the transfer of mines under Article 8. It is required that the transfer of mines are only permitted to a State which is bound by the protocol or its authorised agency. Importantly, the protocol also contains obligations to record and retain information on the locations of all minefields, mined areas, booby traps and other devices and requires that such records be used to protect civilians from the effects of these weapons. Moreover after the cessation of active hostilities, all mines, mined areas, booby traps and other devices shall be cleared and destroyed.

The approach of CCW Amended Protocol II is most relevant to States that are not party to the Anti-Personnel Mine Ban Convention (APMBC). As this protocol also contains rules covering anti-vehicle mines, booby traps and other devices, it is an important instrument for all States to adhere to.

CCW Protocol V covers ERWs which refers to unexploded and abandoned ordnances. Of central importance is Article 4 which requires States to record and retain information on the use or abandonment of explosive ordnances during a conflict. This information is essential to protect civilians in affected areas and to facilitate the rapid clearance of ERWs after a conflict has ended. Additionally, this article requires that the information be shared with the parties in control of the affected territory and with other relevant organisations conducting risk education or clearance at the end of active hostilities. Similarly, Article 3 requires parties to clear ERWs in territory under a party's control and provide assistance to facilitate the clearance of ERWs in areas it does not control resulting from its operations. Article 5 requires High Contracting Parties to take all feasible precautions in territories under their control to protect civilians and civilian objects from the effects of ERWs.

In terms of implementation, both amended Protocol II and Protocol V require action well before a conflict begins. For example, the necessary procedures and policies must be in

place to record the use of explosive ordnances, mines, booby traps and other device before a conflict begins. Such procedures need to be incorporated in military manuals, standard operating procedures or standing orders and the application of such procedures should be confirmed through field training exercises.

It is also important to highlight two other international treaties that have relevance for addressing the problems caused by mines and ERWs. The APMBC prohibits all use, development, production, stockpiling, retaining or transfer of anti-personnel mines. It also requires High Contracting Parties to destroy stockpiles within four years. Additionally, the High Contracting Parties are required to mark and fence all mined areas and warn the civilian populations of their risks. They are also required to clear all mined areas as soon as possible but no later than ten years after the protocol has entered into force. There are also provisions to help improve the lives of mine victims through the delivery of medical assistance, rehabilitation and ensuring socio-economic reintegration.

The Convention on Cluster Munitions prohibits all use, production, stockpiling and transfer of cluster munitions. The High Contracting Parties are required to destroy stockpiles of these weapons within eight years of becoming a party to the convention. They are also required to mark, monitor and fence contaminated areas and warn civilian population of the risks. They are required to clear all contaminated areas as soon as possible but no later than ten years. States Pare also required to improve the lives of the victims of cluster munitions by providing medical assistance and support towards their rehabilitation and socio-economic reintegration.

During the discussion that followed, certain States felt it is difficult for governments alone to deal with the problem of weapon contamination and support from partners is essential. Many of the lessons learnt have been shared through regional bodies such as ARMAC. One participant highlighted that more than 15 million tons of bombs were dropped in Vietnam and 40,000 people were injured. Since 80% of the Vietnamese population relies on agriculture, there is a huge risk to the farming sector as a result of ERW contamination. It is estimated that it will take over 100 years to fully clear the country's ERW contamination. There were also some concerns about the low levels of awareness on how to identify and handle ERWs while collecting metal scrap. Many of the experts agreed that it is essential to have better surveys to collect data as well as greater engagement on capacity building and military cooperation on demining and ERW clearance activities. Some participants stressed the importance of consulting with the local communities to include or co-opt them in such programmes. Some States shared that mine education is part of the army syllabus and as a result their armed forces possess demining expertise.

In response to a question on efforts to record as well as retain and share information to facilitate the clearance of ERWs, experts responded that while there have been improvements in the overall implementation of this obligation, there is still room for further improvement. Overall, there has been a genesis of State responsibility to support clearance or destruction of mines and ERWs in post-conflict contexts. In response to a question on sea mines, the experts shared that this issue is not covered by any of these treaties discussed (CCW and its Protocols I – V and the APMBC) as they focus on landmines alone. It was noted, however, that the Hague Convention places obligations on mine laying at sea.



(L-R) Mohammad Shafiq Yosufi, Director, Mines Action Coordination, Afghanistan, Johnny Rackenberg Thompsen, Weapons Contamination Regional Adviser, ICRC and Medard Ainomuhisha, International Legal and Social Affairs Department, Ministry of Foreign Affairs, Uganda.



Medard Ainomuhisha, International Legal and Social Affairs Department, Ministry of Foreign Affairs, Uganda, chairs the session on 'Addressing the impact of landmines and explosive remnants of war'.



## SESSION 5

# THE CCW'S WORK ON IMPROVISED EXPLOSIVE DEVICES (IEDs)

### An introduction to the IED phenomena

### An overview of the CCW's work on IEDs

The objective of this session was to discuss the features of improvised explosive devices (IEDs), their use and humanitarian impact. The session highlighted the national and international responses to IEDs.

IEDs are commonly used as roadside bombs. The session looked at the problem of IEDs in Nepal during the Maoist insurgency. During this time, IEDs were mostly used by non-state actors. Following the conclusion of the Comprehensive Peace Agreement in 2006, IED incidents have significantly reduced, barring some sporadic ones. Most of the IEDs used were radio controlled. The government responded through counter measures during the conflict through training, equipment and enhancing capability to identify IED networks. The army established a specialised unit in 2001 to analyse and dispose of IEDs as well as conduct training. They also organised awareness raising and victim assistance campaigns.

The presenters further discussed IEDs from a humanitarian mine action perspective. First, the term IED is not specific, but rather used to describe many different devices, that may have only one thing in common; their production (improvised or locally-manufactured). They can range from landmines to vehicle-borne, airborne, waterborne and suicide devices.

Second, IEDs can be found in conflict settings characterised by ongoing hostilities, or could be abandoned and remain following the cessation of hostilities as ERWs alongside other explosive hazards such as industrially-manufactured landmines, unexploded ordnances or abandoned explosive ordnances.

Third, although they are improvised, many IEDs such as those found in Iraq are the result of careful design and development over time. They reflect a number of iterative changes from lessons learnt through successful and unsuccessful operational use.

It was also recalled that IEDs are not new to mine action; they have contributed to explosive ordnance contamination since the advent of mine action almost 30 years ago. In Colombia, for example, the 50-year conflict has resulted in widespread IED contamination – mostly improvised landmines, but also other devices. As a result, mine action operations have addressed the problem of IEDs for long in many countries, thus, paving the way for humanitarian assistance and resettlement.

A contemporary challenge is the systematic deployment of IEDs on a greater scale in several countries by NSAGs, including in urban settings where more complex IEDs often tend to be found. The use of these weapons by highly visible groups such as the Islamic State (IS) has drawn further attention to IEDs. A large proportion of the IEDs deployed in the Kurdistan Regional Government area, for example, are locally-manufactured, victim-

operated landmines. This new contamination adds to weapon contamination from previous conflicts and puts further strain on national mine action programmes.

In the face of an overwhelming humanitarian imperative to take action with civilians being threatened from enduring contamination, there has been a pressing need for mine action responses to address this issue. Thus, landmines and ERWs are considered first and foremost a humanitarian concern that should be addressed in pursuit of humanitarian objectives, and in accordance with humanitarian principles.

The engagement of mine action organisations on IEDs has and should continue to follow the same principles as those guiding humanitarian demining operations, especially that of impartiality and independence. Humanitarian mine action operations are not defined by weapon type (i.e. they include improvised devices), but by the humanitarian objectives they pursue and consequently, by the context in which they are conducted (i.e. one that permits respect for humanitarian principles and ensures safety of operations). Finally, a mine action organisation must have the necessary skill set and equipment to undertake the relevant operation – or develop competencies and purchase equipment accordingly, as for any other explosive ordnance disposal operation.

Operations in these contexts are regulated by the International Mine Action Standards (IMAS). The IMAS are developed to provide a common and consistent framework and approach for mine action operations aimed at safety, effectiveness and quality. They provide the overall framework to address all explosive ordnances, including IEDs, within the boundaries of humanitarian action. Explicit and implicit references to IEDs in IMAS have allowed programmes to frame operations that concern improvised devices. Notwithstanding these developments, the evolving working environment for mine action has revealed a need for IMAS to be strengthened in a number of areas. These include risk management, competency levels, training and equipment requirements or clarification on the application of the IMAS to improvised devices.

Conversely, matters relating to IED disposal in military and security contexts, with items that are ‘in play’ or ‘active’, are the domain of security sector operations. In fact, many IED incidents currently recorded in countries such as Afghanistan, Iraq, Kenya and Nigeria relate to car bombs and suicide attacks. These types of devices and contexts fall outside the parameters of mine action. Rather, they should fall in the purview of security forces and be dealt with under the guidelines and standards for such forces.

Lastly, the discussions provided an overview of the CCW’s work on IEDs. In particular, Amended Protocol II discusses IEDs and focusses on mitigating their humanitarian impact. If manually or command detonated, it may meet the definition of “other devices” under Amended Protocol II. An IED is not defined in IHL and the CCW is the only legally binding instrument that has specific provisions on it. Of note, IED use also occurs in situations below the threshold of an armed conflict and are mostly used by NSAGs. However, the CCW and its protocols only apply to situations of armed conflict and therefore, do not cover such use in these situations.

The Group of Experts under CCW Amended Protocol II have been discussing IEDs and there is a new mandate to continue to discuss this issue into 2018. The Group of Experts invited participation from national and independent experts and delegations and also experts



from organisations. The Group of Experts proposed that there should be national and local stigmatisation and rejection of IED use.

The CCW was able to gather critical mass on the IED issue and the High Contracting Parties to the CCW adopted a declaration on IEDs in 2016. The declaration covers five main points: appropriate stockpile management to prevent diversion to precursors and components; exchanging information on measures to mitigate threats of IEDs as well as on IED attacks; raising awareness; organising risk education campaigns; and organising capacity building for High Contracting Parties needing financial and technical support. The French delegation has been mandated in 2018 to discuss issues concerning the general features of IEDs and methods to remove them and protect civilians.

During the discussion that followed, certain participants were interested in knowing whether there is an international mechanism to coordinate offers of assistance from different States to clear weapon contamination. In response, the experts shared that each offer of assistance has different objectives, parameters and partners. It is dependent on the receiving country to select and accept an offer of assistance and ensure that it does not compromise the humanitarian neutrality mandate of mine action programmes. Another challenge for each State is to keep the humanitarian action mandate separate from security/military operations. When it comes to IEDs, some States shared that they have established an inter-ministerial steering committee at the national level to address this problem to build closer coordination and a concerted response. Such steering committees also need to focus on efforts to protect civilians. The experts added that for reporting purposes under the CCW, it is better to separate IED reporting from reporting on anti-personnel mines to better capture trends. Also IEDs used as improvised landmines should be reported as the latter. There is a need to disaggregate and capture this data in national databases.



Major General Hamad Nasser Al-Bader, Chief Military Justice Authority, Ministry of Defence, Qatar, chairs the session on 'The CCW's work on improvised explosive devices'.



Major General Shekhar Singh Basnyat, Nepal Army, gives an overview of the IED phenomena.

## SESSION 6

# THE CCW'S WORK ON AUTONOMOUS WEAPONS SYSTEMS

### The issues and concerns about autonomous weapon systems

#### Autonomy in existing weapons systems

This session looked at how the CCW addresses developments in science and technology related to weapons and the legal and ethical issues and concerns relating to autonomous weapons systems (AWS).

The speakers noted that technological developments hold great promise but they may also present risks for civilian protection and may challenge the rules of IHL. It is undisputed that any new technology of warfare must be capable of being used and must be used in strict compliance with IHL. The general rules of IHL apply to all weapons – these are the rules of distinction, proportionality and precautions in attack, the prohibition of indiscriminate weapons, and weapons of a nature to cause unnecessary suffering. Each State is responsible for assessing the legality of any new weapon it develops or acquires through the legal review of new weapons under Article 36 of Additional Protocol I. The ICRC has developed a guide on conducting a legal review for new weapons and this is being updated to take new technologies of warfare into account.

A major topic of discussion has been how to ensure that AWS conform to IHL and whether existing law is sufficiently clear or whether there is a need to clarify IHL or to develop new rules to deal with these challenges. There are differing viewpoints among High Contracting Parties on this as far as AWS are concerned.

The CCW GGE on lethal autonomous weapon systems (LAWS) was chaired by India and had its first meeting in November 2017. Although there is no internationally agreed definition of an AWS, the ICRC uses the following working definition: any weapon system with autonomy in its critical functions i.e. a weapon system that can select and attack targets without human intervention. This helps to distinguish AWS from human controlled – including remotely-controlled – weapons and critically provides a baseline for discussions, enabling a greater understanding of the legal issues based on existing autonomy in weapon systems and the use of force. Autonomy in weapon systems has existed for some time and has been increasing over time specifically in relation to the critical functions of selecting and attacking targets.

The law is addressed to humans and the legal obligations under IHL rest with those who plan and carry out attacks. It is humans who are responsible and accountable for respecting the law. This responsibility and accountability cannot be transferred to a weapon system. In order for human combatants to make judgements required by IHL – of distinction, proportionality and precautions – they need a minimum level of control over any weapon system. States generally agree with the notion of retaining human control but the scope is very often debated. There is also a need to consider the compatibility of AWS with the principles of humanity and the dictates of public conscience; the Martens Clause provides the link between the law and ethics. The ICRC's main concern is the degree of human

control needed to ensure compliance with IHL and to satisfy ethical concerns. In addition to this, it is clear that there is a deep discomfort with the idea of machines making life and death decisions on the battlefield.

Whether the weapon once activated will operate within the constraints of IHL depends on its predictability and reliability. Human supervision and the ability to intervene after activation are especially important factors. The speakers noted that the use of machine learning in weapon systems is still at a nascent stage and continues to pose fundamental concerns regarding predictability in targetting. Deploying a weapon system, the effects and outcomes of which are wholly or partially unpredictable, entails a significant risk that IHL will not be respected and poses a particular challenge for the legal review of the weapon.

Questions have been raised about whether the use of AWS may lead to a legal accountability gap in the cases of violation of IHL. Under the laws of State responsibility, a State could be held liable for internationally wrongful acts such as violations of IHL committed by their armed forces using AWS. A State can also be held responsible if it were to use an AWS that it has not been adequately tested or reviewed prior to deployment. Under international criminal law, a programmer who intentionally programmes an AWS to commit war crimes will be criminally liable, as would a commander for deploying AWS in an unlawful manner.

The speakers shared that autonomy already supports various capabilities in weapons systems, which are mostly defensive. In addition, automated target recognition capabilities have existed since the 1970's, however with limited decision making and perceptual abilities. The only offensive AWS are loitering munitions. The private sector plays a leading role in developing AWS with many autonomous technologies developed for dual use, with beneficial civilian applications. Further, the international security implications were also outlined during the session, such as the vulnerability of AWS to hacking, concerns of proliferation to non-state actors, escalation concerns, the increasing technology gap between States and the threat of an AWS arms race. Since artificial intelligence (AI) is constantly evolving, the focus must be on autonomy and having a human in the loop is key to mitigating risks. Further, practical measures need to be identified in order to ensure compliance with IHL.

During the discussions, questions were raised as to how IHL's rules of distinction, proportionality and precautions in attack are considered while conducting a legal review of autonomous weapons. The speakers shared that where the weapon takes on the targetting functions, the legal review demands a very high level of confidence that when using the weapon, the user will be capable of complying with IHL and that the required human judgement to apply IHL rules is not replaced by computer-controlled processes. A question was raised about the distinction between offensive and defensive attacks for the purposes of an assessment under IHL to which the speakers responded that no legal distinction exists between attacks of an offensive and defensive nature, and both must equally comply with IHL.



Brigadier Rumel Dahiya, Institute of Defence Studies and Analyses, chairs the session on 'The CCW's work on autonomous weapons systems'.



A participant raises a point during the sessions on 'The CCW's work on autonomous weapons systems'.



Commodore Nishant Kumar, Director Military Affairs, Disarmament and International Security Affairs Division, MEA India, speaks on autonomy in existing weapons systems.

## SESSION 7

# CONVENTIONAL WEAPONS ABOUT WHICH THERE IS AN ONGOING HUMANITARIAN CONCERN

### Anti-vehicle (AV) mines and incendiary weapons

#### The humanitarian consequences of anti-vehicle mines

The discussions in this session focussed on conventional weapons such as anti-vehicle (AV) mines and incendiary weapons and their humanitarian and developmental consequences. The Geneva International Centre for Humanitarian Demining (GICHD) and the Stockholm International Peace Research Institute have been systematically collecting and analysing data for the last three years. As per available data Mali and Ukraine have recorded the highest number of AV mine incidents in 2016, representing 35% of the global total and incidents in Ukraine increased by 48% from 2015 to 2016.

Disaggregated incident data show that 46% of those affected by AV mines in 2016 were civilians. While in conflict settings, civilians represented 40% of casualties, they accounted for 87% of casualties in post-conflict settings. Further, mined roads pose a significant challenge to the effective delivery of humanitarian aid because vehicles can no longer access those areas. AV mines are unlikely to be triggered by contact with a person or through non-mechanised farming activities as they need more pressure to detonate. Thus, while AV mines are a visible threat in the immediate post-conflict phase, they are also more likely to go initially unnoticed. Precisely for this reason, the negative impact of AV mines has a significant potential to increase when a country is progressing towards post-conflict recovery and development.

Afghanistan faces challenges due to the lack of records and because different groups have randomly planted the mines. Other challenges come from AV mines being laid much deeper in the ground than AP mines and the difficulty in detecting mines that have a minimum metal content. Though it seems anti-vehicle mines have fewer casualties, each one can kill more people if triggered, since they are more powerful. Agricultural cultivation is affected due to anti-vehicle mine contamination. In Afghanistan, 43 out of 260 planned development projects are negatively affected by landmines; of these the majority – around 37 were hindered by anti-vehicle mines. On an average, around 14,825 square meters needs to be cleared just to find one anti-vehicle mine, as the contamination is spread out over a fairly large area in the country. A 100% clearance rate has to be achieved before land can be released to the communities for agricultural purposes. In Afghanistan, many areas contain both AP mines and AV mines making demining operations in these areas more costly and time consuming.

Legally, a mine is a munition designed to be detonated by a person or a vehicle. An AP mine is designed to be detonated by a person but no legal instrument, including the CCW provides a definition of an AV mine, the CCW only refers to mines other than anti-personnel mines (MOTAPM).

Customary IHL contains a number of relevant rules that apply to all mines, including AV mines. Specifically rules 81 – 83, as outlined in the ICRC’s customary law study, provide that when landmines are used, particular care must be taken to minimise their indiscriminate effects, such as providing warnings, markings, fencing and monitoring. The location of all mines must be recorded as far as possible and that such devices must be removed or neutralised at the end of hostilities to render them harmless to civilians. More specific rules are found in the CCW Amended Protocol II, which prohibits:

1. directing mines at civilians or civilian objects or to use them indiscriminately;
2. using mines that are of a nature to cause superfluous injury or unnecessary suffering; and
3. using any mine, booby trap or other device that will detonate by presence of metal detectors.

Article 6 (3) of the CCW Amended Protocol II is the only provision which specifically addresses AV mines. It prohibits the use of remotely delivered AV mines unless self-deactivation/self-destruct features are included to the extent feasible. There are no other specific rules on AV mines other than the general rules of IHL that govern the use of all weapons. There is, for example, no requirement for AV mines to be detectable or to have minimum metal content, no specific restriction on placement and no specific limits on active life.

The CCW established a GGE to look into AV mines from 2002 to 2006, which included efforts to negotiate a new CCW protocol. Negotiations did advance but could not reach an agreement and concluded without adopting a final text. The GGE however did produce a declaration on MOTAPM. It was signed by 25 CCW High Contracting Parties who pledged to take a number of steps to reduce the humanitarian impact of AV mines. These issues continue to be part of discussions within the CCW framework but views differ on how to address issues related to AV mines. Some States support the development of a new protocol while others believe that it is not necessary and efforts should focus on better implementation of the CCW Amended Protocol II.

Incendiary weapons are covered by the CCW Protocol III. It defines such weapons as munitions that are primarily designed to set fire to objects or cause burn injuries to persons through the action of heat or flame. The definition excludes those munitions which may have incidental incendiary effects or “combined effects” munitions where the incendiary effect is not designed to burn people or objects. In recent years, a number of States and organisations have raised questions about the adequacy of Protocol III and if it is adequately protecting civilians in light of the use of incendiary weapons and weapons with incendiary effects in recent conflicts. As a result, there is a renewed focus on Protocol III in CCW discussions. In addition, there are customary IHL rules that reflect the provisions contained in Protocol III specifically, Rules 84 and 85 of the ICRC Customary IHL study.





(L-R) Louis Maresca, Senior Legal Adviser, ICRC, Abdul Qudoos, Operations Research and Development Manager, UN Mine Action Centre of Afghanistan, Ursign Hoffman, Adviser, Policy, Geneva International Centre for Humanitarian Demining and Pham Hai Anh, Deputy Director of International Organizations Department, Ministry of Foreign Affairs, Vietnam.



Pham Hai Anh, Deputy Director of International Organizations Department, Ministry of Foreign Affairs, Vietnam, chairs the session on 'Conventional weapons about which there is an ongoing humanitarian concern'.



Participant speaks during the session on 'Conventional weapons about which there is an ongoing humanitarian concern'.



Abdul Qudoos, Operations Research and Development Manager, UN Mine Action Centre of Afghanistan, speaks on the humanitarian and developmental consequences of anti-vehicle mines.

## SESSION 8

# INSTITUTIONAL SUPPORT ON CCW ADHERENCE AND IMPLEMENTATION

This session provided information on the various tools and resources that the ICRC has developed over the years relating to the CCW and on IHL that can be accessed through the ICRC website. This includes the ICRC Treaty database and the National Implementation database, which allows users to search IHL treaties on specific topics and also lists specific treaties ratified by each State. These databases also allow users to search for domestic legislation and case law by topic, including in relation to weapons treaties such as the CCW. Factsheets on IHL topics with key legal provisions as well as the CCW and its protocols are also available along with the ICRC commentaries, to the 1949 Geneva Conventions and its Additional Protocols. The speakers also introduced the Ratification Kit for the CCW that assists States which are considering joining the CCW and its protocols. The kit, available in all UN languages, contains information on the process of ratification and includes a model instrument of accession.

National implementation tools and mechanisms include the manual on the domestic implementation of IHL, a practical tool for all those involved in IHL implementation including policy makers, legislators and parties assisting them. Of note is chapter 6 which covers all weapons treaties including the CCW and its protocols. It provides an overview of the convention and its protocols and contains a CCW model law which can be adapted as needed while developing domestic legislation.

The session noted that national IHL committees (NIHLC) can serve as important national reference points on IHL issues. These are inter-ministerial bodies that advise and assist States on implementing and raising awareness of IHL. Establishing such committees is the responsibility of States but it is supported by the ICRC as one of the means of ensuring effective application of IHL. There is no standard structure or format for such bodies and as a result they vary in structure from country to country. Their effectiveness depends on their composition and therefore, it is important to bring in those ministries/agencies that have a direct interest in IHL implementation such as defence, foreign/external affairs/law and justice. Often the national Red Cross Red Crescent societies play a key role and contribute their expertise through advice and membership to such bodies: so far, 112 States have national IHL committees. They can review national legislation and propose amendments. The ICRC considers working with NIHLC a priority as it provides an important forum for sharing its experience and advice. Lastly, the ICRC Advisory Service stands ready to assist States in their efforts to further respect for IHL through its network of field based legal advisors and through its headquarters in Geneva, Switzerland.

The discussions also considered the role of the CCW Implementation Support Unit (CCW-ISU) in providing secretariat level support for all CCW meetings, facilitate communication among the High Contracting Parties and international organisations, and supporting States with the implementation of the CCW and its protocols.

The key objectives of the CCW sponsorship programme run by the CCW-ISU are to promote universalisation and the implementation of the CCW and its protocols. It is administered on the basis of the Guidelines for the CCW Sponsorship Fund Administration. The donor countries for 2016 – 2017 include: Australia, China, Croatia, Estonia, India, Republic of Korea, Turkey and Switzerland. Importantly, States not yet party to the CCW can also apply for sponsorship through this programme.



Surpiya Rao, Legal Adviser, ICRC New Delhi, speaks at the session on 'Institutional support on CCW adherence and implementation'.



## CLOSING SESSION

### **Dr E M S Natchiappan**

*President, Indian Society of International Law (ISIL)*

Dr Natchiappan underlined that the Geneva Convention and its Additional Protocols have established norms for the protection of civilians in armed conflict. He added that the universal ratification of these instruments is therefore an important step to ensure respect for IHL.

He noted that the conference was successful in sensitising participating States on the CCW and its protocols and believed that such conferences would help motivate governments adhere to and implement the provisions of such an important treaty. He hoped that such efforts would continue beyond the conference and all participating States would work in cohesion towards the development and implementation of IHL.

### **Dr Pankaj Sharma**

*Joint Secretary, Disarmament and International Security Affairs Division, MEA, Government of India*

Dr Sharma thanked all the participants for their valuable contributions as well as the ISIL and the ICRC for their efforts, which resulted in the success of the conference. He emphasised that India accords high priority to the CCW and is fully committed to its universalisation and implementation. He said that it was heartening to see the wide-ranging discussions that took place on the challenges in ratification and implementation and felt the deliberations would help guide and strengthen the collective efforts.

Noting that India views with concern the growing threat of “terrorism” and the associated use of weapon systems like IEDs, he shared that creating awareness about the dimensions of such threats can help manage them more effectively. In relation to the complex challenges of emerging technologies, he added that the CCW is well placed to address the threats due to its flexible and balanced nature and its universal character. He concluded by saying the conference has been a testimony of the continued relevance of the CCW and its ability to bring together a vast number of stakeholders. Lastly, he hoped the momentum and commitment generated would be sustained by participating States and international institutions.

### **Ms Christine Beerli**

*Vice President, International Committee of the Red Cross (ICRC)*

Vice President Beerli affirmed that this has been a very significant event for the ICRC as it is the first major conference of its kind on IHL in India, and one of the largest conferences that the ICRC has organised on the CCW. She congratulated the Ministry of External Affairs, Government of India as well as the Indian Society of International Law for their full-hearted support.

She hoped that the conference would help launch and advance national discussions on joining the CCW’s protocols in the near future. Although the discussions at this conference



had come to an end, the consultations amongst the relevant ministries and departments were just beginning. As discussions progress on the adherence and implementation of the CCW and its protocols, she affirmed that the ICRC stands ready to fully support such efforts through its network of legal advisors. She hoped participants would build upon the constructive exchanges in New Delhi and that the States and international institutions participating in the Conference would remain connected in their joint efforts to promote respect for IHL.



Christine Beerli, Vice President, ICRC, during the closing session of the International Conference on the Convention on Certain Conventional Weapons.



Dr E M S Natchiappan, President, ISIL, addresses the participants during the closing session.



(L-R) Jeremy England, Head of Regional Delegation, ICRC, New Delhi, Christine Beerli, Vice President, ICRC, Dr Pankaj Sharma, Joint Secretary, Disarmament and International Security Affairs Division, MEA India, Dr E M S Natchiappan, President, ISIL.



Dr Pankaj Sharma, Joint Secretary, Disarmament and International Security Affairs Division, MEA India ,thanks the participants for their valuable contributions during the course of the conference.

## PART III

# INTERNATIONAL CONFERENCE ON THE CONVENTION ON CERTAIN CONVENTIONAL WEAPONS

## PROGRAMME

Background notes and guiding questions for each session are included in the conference briefing notes distributed to participants.

### Monday 4 December 2017

**1830 – 2100** Cultural programme followed by dinner hosted by General (Dr) Vijay Kumar Singh (Retd.), Minister of State for External Affairs, Government of India at the Parvasi Bhartiya Kendra

### Tuesday 5 December 2017

**0830 – 0900** **Registration**

**0900 – 0945** **Welcome and keynote address**

Moderator: *Jeremy England, Head of Delegation, ICRC*

Welcome Address: *Dr EMS Natchiappan, President, Indian Society of International Law (ISIL)*

Keynote Address: *Ruchi Ghanashyam, Secretary (West), Ministry of External Affairs, Government of India*

*Christine Beerli, Vice President, ICRC*

**0945 – 1015** **Group Photo followed by Tea**

**1015 – 1115** **Session 1: An introduction to the Convention on Certain Conventional Weapons (CCW)**

Session objectives: Provide an overview of the basis of the CCW in international humanitarian law, its contents and the current state of its status and operation.

Chair: *Commodore Nishant Kumar, Director Military Affairs, Disarmament and International Security Affairs (D&ISA) Division, Ministry of External Affairs, Government of India*

#### **The CCW and International Humanitarian Law**

*Kathleen Lawand, Head of the Arms Unit, Legal Division, ICRC Geneva*

#### **The CCW today: The state of ratification and implementation**

*Bantan Nugroho, Head, CCW Implementation Support Unit, United Nations Office for Disarmament Affairs*

**1115 – 1245****Session 2: The CCW from military perspective, policy and practice**

Session objectives: Understand the measures that armed forces must take to ensure CCW implementation.

Chair: *Brigadier General Md. Israt Hossain, Armed Forces Division, Ministry of Defence, Bangladesh*

**What the CCW requires of armed forces**

*Lt. Colonel Jim Burke, Irish Defence Forces*

**CCW implementation in the Armed Forces**

*Colonel Alejandro Manalo, AFP Munitions Control Centre, Ministry of Defence, Philippines*

*Major General Mervyn Suneth Perera, Sri Lankan Army*

**1245 – 1345****Lunch****1345 – 1500****Session 3: State views on the CCW**

Session objectives: An exchange of views of participating States on the issues raised in sessions 1 and 2 and based on the guiding questions provided in the briefing note

Chair: *Kathleen Lawand, ICRC Geneva*

**1500 – 1630****Session 4: Addressing the impact of landmines and explosive remnants of war**

Session objectives: Highlight the humanitarian consequences of landmines and explosive remnants of war, how affected States are dealing with them and the international humanitarian law rules to prevent and reduce their impact.

Chair: *Medard Ainomuhisha, International Legal and Social Affairs Department, Ministry of Foreign Affairs, Uganda*

**The impact of landmines and explosive remnants of war**

*Mohammd Shafiq Yosufi, Director, Mines Action Coordination, Afghanistan*

*Johnny Rackenberg Thompsen, Weapons Contamination Regional Adviser, ICRC*

**1630 – 1650****Tea****1650 – 1730****Session 4 (cont.):****The international rules to address the consequences of landmines and explosive remnants of war**

*Louis Maresca, Senior Legal Adviser, Arms Unit, Legal Division, ICRC*

END OF DAY ONE

**1930**

*ICRC cocktail reception for participants and guests, Sakya Room, ITC Maurya*

## Wednesday 6 December 2017

### 0900 – 1100 **Session 5: The CCW's work on improvised explosive devices**

Session objectives: Discuss the features of IED's, their use and humanitarian impact, and the national and international response

Chair: *Major General Hamad Nasser Al-Bader, Chief Military Justice Authority, Ministry of Defence, Qatar*

#### **An overview of the IED phenomena**

*Major General Shekhar Singh Basnyat, Nepal Army*

#### **IEDs and humanitarian mine action**

*Ursign Hoffman, Advisor, Policy, Geneva International Centre for Humanitarian Demining*

#### **The CCW's work on IEDs**

*Bantan Nugroho, Head, CCW Implementation Support Unit, United Nations Office for Disarmament Affairs*

### 1100 – 1130 **Tea**

### 1130 – 1230 **Session 6: The CCW's work on autonomous weapons systems**

Session objectives: How the CCW addresses developments in science and technology related to weapons and the legal and ethical issues and concerns relating to autonomous weapons systems.

Chair: *Brigadier Rumel Dahiya, Institute of Defence Studies and Analyses*

#### **The issues and concerns about autonomous weapon systems**

*Kathleen Lawand, Head of the Arms Unit, Legal Division, ICRC*

#### **Autonomy in existing weapons systems**

*Commodore Nishant Kumar, Director Military Affairs, Disarmament and International Security Affairs Division, Ministry of External Affairs, India*

### 1230 – 1330 **Lunch**

### 1330 – 1430 **Session 7: Conventional weapons about which there is an ongoing humanitarian concern**

Session objectives: Raise awareness of additional conventional weapons that may have indiscriminate effects or cause unnecessary suffering

Chair: *Pham Hai Anh, Deputy Director of International Organizations Department, Ministry of Foreign Affairs, Vietnam*

#### **The humanitarian and developmental consequences of anti-vehicle mines**

*Ursign Hoffman, Advisor, Policy, Geneva International Centre for Humanitarian Demining*

*Abdul Qudoos, Operations Research and Development Manager, UN Mine Action Centre of Afghanistan*

**The legal concerns about anti-vehicle mines and incendiary weapons**

*Louis Maresca, Senior Legal Adviser, Arms Unit, Legal Division, ICRC*

**1430 – 1515**

**Session 8: Institutional support on CCW adherence and implementation**

*Supriya Rao, Legal Adviser, ICRC New Delhi*

*Bantan Nugroho, Head CCW ISU*

**1515 – 1545**

**Tea**

**1545 – 1630**

**Closing**

**Moderator:**

*Jeremy England, Head of Regional Delegation, ICRC*

*Dr E M S Natchiappan, President, ISIL*

*Dr Pankaj Sharma, Joint Secretary, Disarmament and International Security Affairs Division, MEA, Government of India,*

*Christine Beerli, Vice President, ICRC*



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## ANNEX I

### BRIEFING NOTES FOR SESSIONS 1-3

#### **An overview 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 (CCW) and its Protocols.**

The 1980 Convention on Certain Conventional Weapons (CCW) is a cornerstone of international humanitarian law (IHL). It seeks to protect civilians from weapons deemed to have indiscriminate effects and combatants from weapons of a nature that cause excessively severe injuries and have no justifiable military purpose. The CCW primarily regulates behaviour during an armed conflict, but it also requires States to take a variety of measures during peacetime and after the end of active hostilities to ensure that its objectives are fully met.

The CCW is comprised of a framework convention containing general provisions on its scope of application, entry into force, review and amendment procedures, etc and five protocols, each of which prohibits or regulates the use of a specific category of weapon. The framework convention also includes an undertaking that High Contracting Parties disseminate the CCW and its protocols, including to their armed forces through military instructions.<sup>1</sup>

The CCW is designed to evolve over time: new protocols can be added to the existing CCW framework, in response to new concerns regarding the use and effects of conventional weapons in armed conflicts and to new developments in weapons technology. Since the CCW was adopted 37 years ago, High Contracting Parties have regularly sought to clarify and enhance the convention's protections for the benefit of civilians and combatants.

As adopted in 1980, the CCW contained only 3 protocols (Protocols I-III). Two additional protocols were subsequently added -- Protocol IV on Blinding Laser Weapons in 1995 and Protocol V on Explosive Remnants of War in 2003 -- and an amended version of Protocol II was adopted in 1996 in an effort to strengthen the rules on landmines, booby traps and other devices.

Today, the CCW applies in both international and non-international armed conflicts. However, when adopted in 1980, the CCW only applied to international armed conflicts. In 2001, States decided to amend Article 1 of the convention to allow its application to non-international armed conflicts (NIAC) as well.<sup>2</sup> This extension covered the protocols existing at the time, namely Protocols I-IV. Amended Protocol II, adopted in 1996, and Protocol V, adopted in 2003, specify in their provisions that they apply in both international and non-international armed conflict.

To join the CCW a State needs to adhere to, at minimum, two of the convention's five protocols.

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1. Article 6 of the CCW.

2. The amendment to Article 1 of the Convention entered into force on 18 May 2004. The extended scope of application established by Art. 1 only applies to the 86 CCW State Parties that have ratified it.

## The CCW's protocols

This section provides an overview of the key requirements of each of the CCW's five protocols. For further information, see the ICRC's factsheets on the CCW and its protocols.

### Protocol on Non-Detectable Fragments (Protocol I)

The protocol prohibits the use of any weapon, the primary effect of which is to injure by fragments that are not detectable in the human body by x-rays.<sup>3</sup>

There are 118 High Contracting Parties to Protocol I as of 1 November 2017.

### Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices as amended on 3 May 1996 (Amended Protocol II)

This protocol restricts the use of landmines [both anti-personnel (AP) and anti-vehicle (AV)] booby-traps and other devices (namely, munitions, including IEDs, that detonate on command or through a timed fuse).<sup>4</sup> The common feature of most of these weapons is that they are designed to be "victim-activated", and have considerable long-term humanitarian consequences. The presence of such weapons will often kill and injure large number of civilians well after armed conflicts have ended and hinder the work of humanitarian organisations to deliver goods and essential supplies to communities in need. Such weapons will also endanger the safe return and resettlement of displaced civilians, hinder the cultivation of valuable farmland and community reconstruction. (See also Briefing Note for Session 4).

Under amended Protocol II, among other general prohibitions, it is prohibited to:<sup>5</sup>

- direct mines, booby traps or "other devices" against civilians or civilian objects;
- use these weapons indiscriminately;
- use these weapons designed to explode when detected by mine-detection equipment; and
- use these weapons if designed or of a nature to cause superfluous injury or unnecessary suffering.

In addition, all feasible precautions must be taken to protect civilians from the effects of these weapons.<sup>6</sup> The parties to the conflict are required to record and maintain records on the locations where mines, booby traps and other devices are placed and remove them after the end of active hostilities.<sup>7</sup> They must also take measures to protect missions of the United Nations, the ICRC and other humanitarian organisations.<sup>8</sup>

3. Protocol II, adopted in 1980, was amended in 1996 in response to the humanitarian consequences of anti-personnel mines. The amended version strengthened the existing rules and included new restrictions on the use of mines, booby traps and other devices and the design of anti-personnel mines. It also included new measures to be taken to reduce the impact of these weapons after the end of active hostilities. Today, only 11 of the States party to the original protocol have not joined Amended Protocol II.

4. Under Article 2(5) of the Protocol, "other devices" are "manually-emplaced munitions and devices including improvised explosive devices designed to kill, injure or damage and which are actuated manually, by remote control or automatically after a lapse of time".

5. See Article 3, Amended Protocol II.



In addition to these general rules, there are specific restrictions for AP and AV mines, namely:<sup>9</sup>

- all anti-personnel mines must be detectable;
- anti-personnel mines other than remotely-delivered mines must have self-destruction and self-deactivation mechanisms unless they are:
  - a) placed within a monitored area ensuring civilians' exclusion from that area; and
  - b) cleared before the area is abandoned
- remotely-delivered anti-personnel mines must have self-destruction and self-deactivation features; and
- remotely-delivered anti-vehicle mines must, to the extent feasible, have self-destruction/self-neutralisation and self-deactivation features.

A number of restrictions apply to the use of booby traps, including the prohibition to attach them or associate them with a range of items, including internationally recognised protective emblems or signs; persons who are sick, wounded or dead; burial and cremation sites; medical facilities, equipment, supplies and transportation; toys and portable objects linked to the feeding, health or hygiene of children; food and drink; kitchen utensils, historic monuments and religious objects; and animals and carcasses.

To ensure compliance with these rules, High Contracting Parties must take all appropriate steps, including legislative and other measures, to prevent and suppress violations of the protocol by persons or on territory under its jurisdiction or control. They are also required to ensure that its armed forces issue the relevant military instructions and operating procedures and train their armed forces on the protocol's rules.<sup>10</sup> High Contracting Parties are also required to file annual reports on their implementation of the protocol that are circulated to the annual meeting of High Contracting Parties.<sup>11</sup>

There are 104 High Contracting Parties to the Amended Protocol II as of 1 November 2017.

### **Protocol on Incendiary Weapons (Protocol III)**

Incendiary weapons are those weapons that are primarily designed to set fire to objects or to burn persons through the action of flame or heat.<sup>12</sup> Protocol III of the CCW is the primary IHL instrument regulating the use of incendiary weapons. Under the protocol, it is prohibited to:<sup>13</sup>

6. See Article 3(10), Amended Protocol II.

7. See Article 9 & 10, Amended Protocol II.

8. See Article 12, Amended Protocol II.

9. See Articles 4, to 6, Amended Protocol II.

10. See Article 14, of Amended Protocol II.

11. See Article 13(4) of Amended Protocol II. These annual reports are to include information on (i) the dissemination of the Protocol to the armed forces and civilian population; (b) mine clearance and rehabilitation programs; (c) steps taken to meet the Protocol's technical requirements; (d) legislation related to the Protocol; and (e) measures take on technical information exchange, international cooperation on mine clearance and technical cooperation and assistance.

- use incendiary weapons against civilians;
- make any military objective located within a concentration of civilians the object of attack by air-delivered incendiary weapons;
- make any military objective located within a concentration of civilians the object of attack by incendiary weapons other than air-delivered incendiary weapons, unless the objective is clearly separated from the civilians and all feasible precautions are taken to minimise civilian harm; and
- make forests or other kinds of plant cover the object of attack by incendiary weapons unless they are being used to conceal combatants or other military objectives.

There are 115 High Contracting Parties to Protocol III as of 1 November 2017.

### **Protocol on Blinding Laser Weapons (Protocol IV)**

Protocol IV prohibits the use and transfer of laser weapons specifically designed to cause permanent blindness.<sup>14</sup> It also seeks to prevent the occurrence of permanent blindness that may result from the use of other laser systems. The High Contracting Parties are required to take all feasible precautions to avoid the incidence of permanent blindness from such other systems.<sup>15</sup>

There are 108 High Contracting Parties to Protocol IV as of 1 November 2017.

### **Protocol on Explosive Remnants of War (Protocol V)**

Explosive remnants of war (ERW) are conventional explosive munitions that have failed to explode as intended (unexploded ordnance or UXO) and stocks of explosive ordnance that have been abandoned by a party to a conflict (abandoned ordnance or AXO).<sup>16</sup>

Protocol V aims to facilitate the rapid removal of ERW after the end of active hostilities and undertake other measures to reduce the impact of ERW on civilians. The protocol requires each party to an armed conflict to take the following measures to reduce the threat posed by ERW:

- record information on the explosive ordnances used by its armed forces during the conflict and share that information afterwards with the party controlling the affected territory, bilaterally or through a mutually agreed third party (such as the UN), or, upon request, organisations engaged in ERW clearance or programmes to warn civilians of the dangers of these devices;<sup>17</sup>
- mark and clear ERW in territory it controls after the end of active hostilities;<sup>18</sup>
- provide technical, material or financial assistance to facilitate the removal of ERW left from its operations and situated in areas it does not control;<sup>19</sup>

12. See Article 1 of Protocol III.

13. See Article 2 of Protocol III.

14. See Article 1 of Protocol IV.

15. See Article 2 of Protocol IV.

16. See Article 2 of Protocol V.

- take all feasible precautions to protect civilians from the effects of ERW including marking, fencing and monitoring of territory affected by ERW, the posting of warnings, and the provisions of risk education to civilians.<sup>20</sup>

In addition to the obligations placed upon the parties to a conflict, all High Contracting Parties in a position to do so, must provide assistance for the marking and clearance of ERW, risk education, and assistance for the care, rehabilitation and socio-economic reintegration of ERW victims.<sup>21</sup> The armed forces of the High Contracting Party and relevant agencies or departments must issue appropriate instructions and operating procedures to implement the protocol and ensure that personnel receive relevant training.<sup>22</sup> The Conference of High Contracting Parties to Protocol V has called upon them to file annual reports on their national implementation of the Protocol.<sup>23</sup>

There are 93 High Contracting Parties to Protocol V as of 1 November 2017.

## **Implementation, compliance and cooperation among CCW High Contracting Parties**

The CCW High Contracting Parties meet regularly to discuss the status and operation of the convention and protocols. Meetings of High Contracting Parties are convened annually. Experts also meet to examine specific issues of humanitarian concern. These can include matters that arise in the context of ongoing armed conflicts and new technologies that may have implications on the conduct of hostilities and the protection afforded to civilians and combatants. Issues currently being discussed in CCW meetings include improvised explosive devices, autonomous weapons systems and anti-vehicle mines (see Briefing Notes 5, 6 and 7 respectively).

In order for the CCW to achieve its goals, it must be implemented at the national level. It is particularly important that its requirements become a part of military doctrine, regulations and training and that each High Contracting Party take all appropriate measures, including the adoption of penal sanctions, to prevent and suppress violations by persons or on territory under its jurisdiction or control.

In 2006, the CCW's Third Review Conference established a compliance mechanism to help facilitate and monitor implementation. It mandates all High Contracting Parties to ensure that their military forces are aware and trained on the CCW's requirements and that they take measures to prevent and suppress violations. It also calls on High Contracting Parties to submit annual compliance reports including information on:

1. the dissemination of information on the CCW to their armed forces and to the civilian population;

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17. See Article 4 of Protocol V.

18. See Article 3(2) of Protocol V.

19. See Article 3(1) of Protocol V.

20. See Article 5 of Protocol V.

21. See Article 8 of Protocol V.

22. See Article 11 of Protocol V.

23. The Conference so decided on the basis of Article 10(2)(b) of Protocol V. These reports include the steps taken in relation to: (i) the clearance, removal or destruction of ERW; (ii) the recording, retaining and transmission of information; (iii) the protection of the civilian population from the risks and effects of ERW; (iv) the protection of humanitarian missions and organizations; (v) assistance with respect to existing ERW; (vi) co-operation and assistance; (vii) victim assistance; (viii) generic preventive measures; (ix) compliance.

2. steps taken to meet the technical requirements contained in CCW Protocols and any other relevant information pertaining thereto;
3. the legislation adopted in relation to the CCW; and
4. measures taken on technical cooperation and assistance.

These reports are to be filed by 31 March each year.

The compliance mechanism also established a pool of experts to which any High Contracting Party can turn to for assistance in fulfilling its legal obligations under the convention and its protocols. A list of experts is maintained by the UN Secretary-General in his roles as the CCW depositary. A High Contracting Party can nominate one expert for each of the protocols to which it is a party to be part of the pool.

The CCW also has an Implementation Support Unit (ISU) which serves as the secretariat for all CCW meetings and supports States' implementation of the CCW. The ISU was established in 2009 and given the mandate by CCW High Contracting Parties to facilitate communications and transmission of information on the CCW, support the implementation of the convention by High Contracting Parties, and contribute to the promotion of the universalisation of the convention and its protocols, among other tasks.<sup>24</sup>

### **Guiding questions for the discussion in Sessions 1 to 3**

1. Is your State a party to the CCW? If so:
  - a. is it a party to all the Protocols and the amendment to Article 1?
  - b. if it is not a party to all Protocols and the amendment to Article 1, what are the main obstacles or challenges to adherence?
  - c. how are the CCW's requirements currently reflected in military instructions, operating procedures and trainings?
2. If your State is not a party to the CCW, is there a possibility that it could adhere to it in the near future? What are the main obstacles or challenges preventing adherence?

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<sup>24</sup> See Final Report CCW/MSP/2009/5, paragraphs 34 to 37.

## BRIEFING NOTES FOR SESSION 4

### Landmines and explosive remnants of war

Modern armed conflicts leave behind a wide range of lethal explosives. These include landmines and explosive remnants of war, ordnance such as artillery, bombs, missiles, mortars, cluster munitions and grenades that have been used but have failed to explode as intended or that have been abandoned by a party to the conflict. Landmines and explosive remnants of war (ERW) continue to threaten civilians and local communities long after the end of active hostilities, indeed long after their military utility has expired. Such weapons are a particular danger to children as these objects are frequently conspicuous, may have an interesting shape and colour. Children may be less likely than adults to know that such objects are explosive.

Until they are cleared, the presence of landmines and ERW puts civilians at risk of death and injury. There are also long-lasting economic consequences for the affected communities and the country as a whole when contamination is widespread.

### The humanitarian costs of landmine and ERW contamination

Unacceptably high numbers of civilian men, women and children have been killed or injured by stepping on a landmine, or by manipulating or disturbing ERW. More than 100,000 such casualties have been recorded by the Landmine Monitor since it began tracking landmine and ERW statistics on global scale in 1999.<sup>25</sup> Yet, the true number is understood to be much higher as many casualties go unreported.

The explosion of a landmine or ERW can inflict a range of injuries on those nearby. These include fragmentation wounds, burns and loss of sight or hearing. Those who survive may also have to endure the amputation of one or more limbs, leaving them disabled for life. Besides their physical injuries, victims will often endure psychological trauma. There are also economic repercussions as it often remains difficult for disabled survivors to find work. In many countries, the loss of income, combined with the significant additional cost of short-term and long-term medical care, can cause significant hardship for the survivors and their families.

The presence of landmines and ERW also hinders the development and reconstruction of war-torn communities. Repairing homes and infrastructure and restoring essential services such as electricity, clean water and sanitation will be slowed and made costlier. Landmines and ERW must first be cleared. Such adverse conditions discourage external investment, further impeding socio-economic development. Farming can also be heavily affected as contaminated land diminishes the capacity of communities to feed themselves.

When contamination is widespread, the presence of these weapons can exact a heavy toll in the form of lost productivity, premature death or disability in the country. Persons wounded and disabled by these weapons are often a heavy burden on the public health sector, already struggling to function with scarce resources.

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25. International Campaign to Ban Landmines, Landmine Monitor 2016, p. 44.

Clearing landmines and ERW can take years and even decades. At present, dozens of countries are confronting the long-term effects of these weapons.

## **The national and international response**

The international community and national authorities have devoted significant attention to reducing the problems caused by landmines and ERW and progress is being made to reduce their human and societal costs. In 2015 alone, donors and affected States together contributed some USD 471 million in international and national support.<sup>26</sup> This includes assistance to programs to locate and clear landmines and ERW, provide risk education to civilians, support for programs providing physical rehabilitation, psychosocial support and vocational training, which are often needed for survivors to rebuild their lives and become financially self-sufficient.

States have adopted four international treaties since 1996 in an effort to prevent and reduce the dangers posed by landmines and ERW. Two of these are protocols to the CCW, specifically Protocol II, as amended on 3 May 1996 and the Protocol on Explosive Remnants of War (Protocol V to the CCW). Two additional and widely ratified instruments are the 1997 Convention on the Prohibition of Anti-Personnel Mines and the 2008 Convention on Cluster Munitions. A summary of each of these treaties is provided below:

Protocol II, as amended in 1996 (hereinafter referred to as “Amended Protocol II” and described in more detail in Briefing Note 1), restricts the use of landmines, booby-traps and certain other devices. Amended Protocol II sets out general restrictions on how these weapons can be used, and requires that all feasible precautions be taken to protect civilians from the effects of their use. It also contains specific restrictions on the use of anti-personnel mines, such as a requirement that all anti-personnel mines be detectable and that when used outside perimeter marked areas they possess self-destruct and self-deactivation features. Amended Protocol II also requires to record the emplacement of landmines, booby traps and other devices and to remove them without delay after the end of active hostilities. There are 104 High Contracting Parties to amended Protocol II as of 1 November 2017.

The Protocol on Explosive Remnants of War (Protocol V to the CCW) is the first multilateral agreement to systematically address the problem of ERW. Concluded in November 2003, it requires each party to an armed conflict to record information on the explosive ordnance used or abandoned by its armed forces during the fighting. After the end of active hostilities, this information is to be shared with other parties and the organisations engaged in clearance or other types of mine action. The protocol also requires each party to mark and clear ERW in territory it controls once the conflict is over and provide technical, material and financial assistance to facilitate the removal of ERW that result from its operations in areas it does not control. Each party must also take all feasible precautions to protect civilians from the effects of ERW. There are 93 High Contracting Parties to Protocol V as of 1 November 2017.

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26. International Campaign to Ban Landmines, *Landmine Monitor* 2016, p. 71.

The 1997 Convention on the Prohibition of Anti-Personnel Mines (AP Mine Ban Convention) prohibits the use, stockpiling, production and transfer of anti-personnel mines. It also requires States Parties to destroy existing stocks of these weapons, to clear mined areas and to reduce the interim risk to civilians through preventive actions such as the marking of mined areas and the provision of warnings and risk education. States Parties also commit to provide for the care and rehabilitation, as well as the socio-economic reintegration of mine victims. States who are in a position to do so must provide assistance to other States Parties that request help in meeting their treaty obligations. There are 162 States Parties to the AP Mine Ban Convention as of 1 November 2017.

The 2008 Convention on Cluster Munitions, adopted in December 2008, prohibits the use, development, production, acquisition, stockpiling, retention and transfer of cluster munitions. It also requires States Parties to destroy existing stocks of these weapons as well as to clear areas contaminated with unexploded or abandoned sub-munitions, and in the interim, mark dangerous areas and provide warnings and risk education to civilians. States also agree to provide assistance to cluster munition victims on their territory, including medical care, rehabilitation and psychological support. In addition, the convention requires States Parties that are in a position to do so, to provide assistance to other States that request help in implementing the treaty's obligations. There are 108 States Parties to the Convention on Cluster Munitions as of 1 November 2017.

#### Guiding questions for discussions in Session 4

1. How are countries affected by landmines or ERW?
  - a. What is the scale of the problem (land contamination, victims, etc.) and how are countries dealing with the consequences?
  - b. How can the national efforts to reduce the threat of landmines and ERW be supported?
  - c. Are there any lessons that can be learnt or that can be of benefit to other States?
  - d. Have the treaties on landmines and ERW been a benefit to States in addressing the consequences of these weapons?
2. If your country has provided assistance to other countries with landmine or ERW clearance, stockpile destruction, or victim assistance, can you share the experience?



## BRIEFING NOTES FOR SESSION 5

### Improvised Explosive Devices

There has been a sharp increase in recent years in the use of improvised explosive devices (IEDs) and in most instances, the large majority of those killed or injured by these weapons have been civilians. Even when armed actors are targeted with IEDs, it is estimated that over one-third of the casualties are civilians.<sup>27</sup>

There is no internationally agreed definition of IEDs. It is generally a catch-all term that States use to describe any explosive device that is placed or fabricated in an improvised manner.<sup>28</sup> It may incorporate military stores or be devised wholly from non-military components. IEDs have no particular form or size.

Almost half the world's countries have been affected by IEDs in recent years. As with any explosive weapon, IEDs can cause death, injury and structural damage through blast and fragmentation. Survivors may be severely injured and left physically disabled and may suffer from long lasting mental distress or illness. In addition to the direct impact of IED explosions, damage to civilian objects can disrupt the provision of essential civilian services, such as healthcare and water supplies. The use of IEDs against humanitarian and peace operations hinders the ability of organisations to deliver assistance or protect civilians.

Many of the humanitarian concerns regarding the use of other explosive weapons also apply to IEDs. Depending on how they are used, they may run counter to the rules of IHL, in particular the rules of distinction, proportionality and precautions in attack. In particular, IEDs are often used deliberately against civilians and civilian objects or otherwise indiscriminately.

### Legal issues

An "IED" is not defined under IHL. Like other weapons, the legal rules that apply to the use of an IED will depend on how the specific device is designed and its functions. If the IED is crafted to be "victim-activated", i.e. triggered by the presence, proximity or contact of a person or vehicle, it may fulfil the definition of a landmine and its use will be subject to IHL rules applying to anti-personnel and anti-vehicle mines, including those of Amended Protocol II of the CCW, and the AP Mine Ban Convention, for those party to these treaties. If it is manually or command-detonated or meant to detonate automatically after a lapse of time, it may meet the definition of an 'other device' for the purposes of the CCW Amended Protocol II.

The bulk of attacks using IEDs occur in populated areas, and in most of these cases the majority of casualties are civilians. Such attacks often infringe fundamental IHL rules on the conduct of hostilities. IHL prohibits the targeting of civilians or civilian objects, and acts or threats of violence whose primary purpose is to spread terror among the civilian population.

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27. Action on Armed Violence, IED Monitor 2017, p. 4.

28. Improvised Explosive Devices, Discussion Paper 1, 2009 Group of Experts of the States Parties to amended Protocol II to the CCW.

Even in situations where an IED is used against a military objective, it may nonetheless contravene the prohibition of indiscriminate attacks.

### **Approaches to limit IED use**

There are a variety of approaches that States have proposed individually and collectively to address the problem of IEDs. One is to identify and limit the supply of materials that could be used to build IEDs. This includes, for example, securing military ammunition depots and ammunition supply chains and improving the clearance of unexploded ordnance from battlefields or military firing ranges. It could also include measures to limit the availability and transfer of commercial goods that are commonly used to make IEDs, such as fertilisers, civilian explosives and detonating cord. These control measures are not in the purview of IHL.

### **The discussion in the CCW**

IEDs have been discussed in the context of the CCW since 2009. In the Group of Experts convened under Protocol II (as amended on 3 May 1996), High Contracting Parties have shared their perspectives on the military aspects and humanitarian consequences of IEDs and have discussed efforts at the national, regional and international levels to prevent their unlawful use. The High Contracting Parties have also discussed ways to strengthen the exchange of information on IEDs and on the technical guidelines, best practices, and other recommendations to address the diversion or illicit use of materials which can be used to make IEDs. Technical developments relevant to mitigating IED threat and risk awareness/public education campaigns to reduce the dangers that IEDs pose to civilians have also been examined. The High Contracting Parties to amended Protocol II adopted a declaration on improvised explosive devices in 2016.<sup>29</sup>

They also continue to work on this issue with a focus on further measures to prevent diversion of precursors and components that could be used to make IEDs; information on IED attacks and ways to mitigate the IED threat; increase synergies with other international organisations and networks; IED risk education campaigns; and financial and technical support for capacity for affected States.

### **Guiding questions for the discussion in Session 5**

1. Which types of IEDs pose a humanitarian concern (e.g. victim-activated or command-detonated etc.) and what is the scale of the problem?
2. How can the problem of IEDs be best addressed by States?
3. How can national efforts to reduce the threat of IEDs be supported?

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<sup>29</sup> Declaration on Improvised Explosive Devices, Annex V to the Final Document of the Eighteenth Conference of the High Contracting Parties, 18 Oct. 2016, UN Doc. CCW/AP.II/CONF.18/6.

## BRIEFING NOTES FOR SESSION 6

### Autonomous weapons systems

Debates on autonomous weapon systems (AWS) have expanded significantly in the recent years among diplomatic, military, scientific, academic and public forums. These debates have included expert discussions on lethal autonomous weapon systems (LAWS) within the framework of the Convention on Certain Conventional Weapons (CCW) from 2014 to 2016, and within expert meetings convened by the ICRC in 2014<sup>30</sup> and 2016.<sup>31</sup>

Views on AWS continue to evolve as a better understanding is gained of current and potential technological capabilities, the military purpose of autonomy in weapon systems, and the resulting questions for compliance with international humanitarian law (IHL) and ethical acceptability.

Some have called for a ban on “fully autonomous weapon systems”, and others have called for a moratorium on their development. Others are of the view that ensuring compliance with existing IHL in the development and use of AWS is sufficient to address any concerns.

This year the CCW High Contracting Parties have shifted discussions to a more formal setting in a Group of Governmental Experts (GGE) on LAWS. The GGE met for the first time in Geneva from 13–17 November 2017.

The ICRC has called on States to establish limits on autonomy in weapon systems to ensure that they can be used in accordance with IHL and within the bounds of what is acceptable under the principles of humanity and the dictates of the public conscience.

### What are AWS?

As there is no internationally agreed definition of AWS, the first challenge is reaching common agreement on the scope of the discussion. There are different perspectives on what constitutes an autonomous weapon. For its part, the ICRC has proposed a broad working definition of “autonomous weapon systems” as:

*“Any weapon system with autonomy in its critical functions. That is, a weapon system that can select (i.e. search for or detect, identify, track, select) and attack (i.e. use force against, neutralize, damage or destroy) targets without human intervention.”*

After launch or activation by a human operator, the weapon system – though its’ sensors, programming (software) and weapon(s) – takes on the targeting functions that would otherwise be controlled directly, or remotely, by humans.

This working definition encompasses some existing weapons<sup>32</sup>, as well as potential future systems. However, the purpose of this definition is to enable a clear distinction from human

30. ICRC (2014) Autonomous weapon systems technical, military, legal and humanitarian aspects, <https://www.icrc.org/en/download/file/1707/4221-002-autonomous-weapons-systems-full-report.pdf>

31. ICRC (2016) Autonomous Weapon Systems: Implications of Increasing Autonomy in the Critical Functions of Weapons, <https://www.icrc.org/en/publication/4283-autonomous-weapons-systems>.

32. For example: missile and rocket defence weapons; vehicle “active protection” weapons; certain missiles, loitering munitions, and torpedoes; and some “sentry” weapons.

controlled (including remote controlled) weapons, and to enable greater understanding of the legal, ethical and technical issues based on the experience of existing weapons with autonomous functions.

## **Human control and compliance with International Humanitarian Law**

Discussions in the CCW on AWS have shown that there is broad agreement among the High Contracting Parties that any new weapon system must comply with IHL. Indeed, the right of parties to an armed conflict to choose their methods or means of warfare is not unlimited.<sup>33</sup> States must ensure that any new weapons that are developed or acquired are capable of being used in compliance with IHL.<sup>34</sup>

The High Contracting Parties also agree that human control must be retained over weapon systems and the use of force. Many States have emphasised the need for “meaningful” or “effective” human control, or “appropriate levels of human judgement” in the use of such weapon systems.

For its part, the ICRC has emphasised that the rules of IHL establish legal obligations for human combatants, those who plan, decide upon, and carry out attacks. Human combatants are responsible for respecting the law. Machines can never “apply the law”, nor can any amount of responsibility and accountability be transferred to a machine, a computer programme, or a weapon system.

In order for human combatants to make the judgements required by the rules of IHL – distinction, proportionality and precautions in attack – a minimum level of human control over any weapon system will be required. For this reason, the ICRC has proposed that States assess the type and degree of human control required in the use of AWS to ensure ethical acceptability.

## **Ethical considerations**

The Martens Clause states that in cases not covered by existing treaties, civilians and combatants remain protected by customary IHL, the principles of humanity, and the dictates of the public conscience.

With increasing autonomy in weapon systems, a point may be reached where humans are far removed from the acts of selecting and attacking targets. A time when human decision-making is effectively substituted with computer-controlled processes, and life and death decisions in armed conflict ceded to machines. This raises ethical questions about the role and responsibility of humans in the use of force and the taking of human life. A deep sense of discomfort exists around the idea of weapon systems that places the use of force beyond human control. Undeniably, the loss of human agency and responsibility in decisions to kill and destroy is unacceptable under the principles of humanity and the dictates of public conscience.

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33. See Article 35(1) of Additional Protocol I to the Geneva Conventions.

34. See Article 36 of Additional Protocol I to the Geneva Conventions.

## **Guiding questions for the discussions in Session 6**

1. How is your State ensuring that the new weapons, means and methods of warfare (including new technologies of warfare such as robotic and AWS) that it develops or acquires can be used in accordance with IHL? Does it have in place a mechanism to assess the legality of such weapons (as is required for States party to Additional Protocol I of the Geneva Conventions)?
2. Could IHL, developed for human and State-controlled behaviour continue to apply *mutatis mutandis* to potentially autonomous machines and through which mediatory mechanisms?
3. Does the transformative character of artificial intelligence (AI) and its possible ubiquity limit the LAWS discussion in any manner or is AI like the other dual-use technologies of the past?

## BRIEFING NOTES FOR SESSION 7

### **Other conventional weapons of humanitarian concern: anti-vehicle mines, incendiary weapons and explosive weapons in populated areas**

There are several weapons that have been highlighted in recent Convention of Certain Conventional Weapons (CCW) meetings raising serious concerns in humanitarian terms and which have been identified by some High Contracting Parties and organisations as warranting further discussions in CCW meetings. This includes anti-vehicle (AV) mines, incendiary weapons and the use of explosive weapons in populated areas.

#### **Anti-vehicle mines**

AV mines (also often referred to as “mines other than anti-personnel mines” or MOTAPM in the CCW context) have been a persistent humanitarian concern.<sup>35</sup> Like anti-personnel (AP) mines, these weapons often continue to remain following the end of active hostilities and their presence is a direct threat to civilians and can significantly hinder the efforts of humanitarian organisations. AV mines can also hinder the return of displaced civilians, the cultivation of valuable farmland and reconstruction, once the fighting is over. The database of AV mine incidents, managed by Geneva International Centre for Humanitarian Demining (GICHD) shows that nearly 600 people were killed or injured by AV mines in 2015, of which 60% were civilians.<sup>36</sup>

In 2001, High Contracting Parties committed to explore the issue of AV mines in more detail and that eventually led to an attempt to negotiate a new CCW protocol on AV mines from 2003 to 2006. When these negotiations concluded unsuccessfully in 2006, 25 High Contracting Parties joined a declaration in which they pledged to implement, on a national basis, measures to help reduce the humanitarian consequences of AV mines.<sup>37</sup> These included commitments not to use any AV mine outside a perimeter marked area unless the mine was detectable and incorporated a self-destruct or self-neutralisation mechanism with a back-up self-deactivation feature.

Despite calls from a number of CCW States, there has been little progress since 2006 towards developing new rules on AV mines to increase the protection of civilians and humanitarian organisations. The CCW State Parties continue, however, to discuss the humanitarian impact of AV mines, the rules of IHL that govern the use of these weapons and the possible technical features that may help reduce civilian casualties.

#### **Incendiary weapons and weapons with incendiary effects**

A number of High Contracting Parties have expressed concern about the humanitarian consequences of incendiary weapons, and there were dedicated discussions on this topic at

35. The terms MOTAPM and AV mines are often used interchangeably in the CCW context.

36. The consequences of AV mines in Afghanistan, Cambodia and South Sudan are detailed in reports prepared by the GICHD and the Stockholm International Peace Research Institute (SIPRI). See GICHD & SIPRI, *The humanitarian and developmental impact of anti-vehicle mines*, 2014; and GICHD & SIPRI, *Global mapping and analysis of anti-vehicle min incidents in 2015*.

37. Declaration on Anti-vehicle Mines, 16 Nov. 2006, UN Doc. CCW/Conf.III/WP.16 presented by Albania Australia, Bosnia and Herzegovina, Belgium, Bulgaria, Canada, Croatia, Denmark, El Salvador, Luxembourg, Estonia, France, Israel, Latvia, Lithuania, Netherlands, New Zealand, Norway, Republic of Korea, Romania, Serbia, Slovenia, The former Yugoslav Republic of Macedonia, United Kingdom, United States. Germany submitted its own declaration which outlines that it would use detectable and limited life AV mines in all circumstances, UN Doc. CCW/Conf. III/WP.17.

the 2017 CCW Meeting of High Contracting Parties. Concerns are based on the severe burn injuries caused by such weapons, the lack of experience that many medical facilities often have in treating them and the long-term disabilities and suffering that victims face. There is also disquiet about the spread of fires when incendiary weapons are used and concerns remain about weapons that have incidental incendiary effects, such as white phosphorous munitions, and the risk that they pose to civilians when used in populated areas.

Protocol III of the CCW is the primary IHL instrument regulating the use of incendiary weapons. Among other rules, it prohibits the use of air-delivered incendiary weapons against any military objective located in a concentration of civilians and restricts their use against forest and other plant cover.

The Protocol defines incendiary weapons as weapons or munitions which are primarily designed to set fire to objects or to cause burn injury to persons through flame, heat, or a combination thereof. However, it excludes weapons that may have “incidental” incendiary effects such as flares, tracers, smoke and signalling systems. As a result, many weapons with such effects are not covered by the protocol’s restrictions because their incendiary effects can be characterised as “incidental” to the munitions’ main purpose. The use of such weapons in populated areas in past conflicts has shown that, like their incendiary counterparts, they can have indiscriminate effects and severe consequences for civilians, because of the likelihood that fires incidentally caused by these weapons will spread and the nature of the burn injuries that result when people come into contact with substances such as white phosphorous.

## **Explosive weapons in populated areas**

A defining feature of armed conflicts over recent decades has been the use of weapon systems capable of delivering massive explosive force from afar and over a wide area. Large bombs, indirect fire weapon systems including mortars, rockets and artillery, and multi-barrel rocket launchers do not raise specific humanitarian concern when used against military objectives in open battlefields. When explosive weapons with a wide impact area are used against targets located in populated areas, there is a significant likelihood of indiscriminate effects, with often devastating consequences for civilians, as we continue to witness in ongoing armed conflicts. The use in populated areas of large improvised explosive weapons by non-state armed groups (NSAGs) also leads to tremendous suffering.

In addition to causing immediate death, injury and destruction to civilians and civilian objects, the use of heavy explosive weapons in populated areas generates “reverberating” effects, which are made worse when hostilities are protracted. Incidental damage to civilian infrastructure, such as health, water and electrical facilities and supply networks may severely disrupt essential services on which the civilian population depends for its survival. This, in turn further threatens the lives of civilians, provoking more deaths, health issues and displacement.

Based on observations made over recent armed conflicts, the ICRC has expressed that the use of explosive weapons with a wide impact area should be avoided in densely populated areas due to the significant likelihood of indiscriminate effects. This issue concerns all States, not just parties to ongoing armed conflicts, since the weapons of concern are found in the arsenals of most armed forces. It is a pressing issue as urban warfare is becoming

the “new normal”. In light of the extensive civilian harm being witnessed today, the ICRC has called on States to show how they are preparing their armed forces to comply with the relevant rules of IHL in their choice of means and methods of warfare when conducting hostilities in populated areas. How are the rules of IHL relevant to the use of explosive weapons in populated areas – in particular, the prohibition of indiscriminate attacks and the rules of proportionality and precautions in attack – being implemented in practice, in terms of restrictions on the choice and use of weapons and what are good policies and practices?

Limiting the impact of weapons that may have indiscriminate effects is at the core of the CCW’s object and purpose. Although the issue of explosive weapons in populated areas is not currently on the CCW agenda, it has been raised in recent CCW meetings and has been discussed in informal meetings and workshops.











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