



ICRC

ADVISORY SERVICE

ON INTERNATIONAL HUMANITARIAN LAW

New Weapons

International humanitarian law is a set of rules which seeks to limit the effects of armed conflict. It restricts the means and methods of warfare permitted to combatants and protects those who are not, or are no longer, taking part in fighting. In particular, Protocol I additional to the 1949 Geneva Conventions on the protection of victims of international armed conflicts (Additional Protocol I) contains basic principles relating to the conduct of hostilities. It provides that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited, and that a distinction must be made between civilians and combatants. Additional Protocol I also prohibits the employment of certain weapons, means and methods of warfare and requires that their legality be assessed. The vast majority of States are now bound by the rules of Additional Protocol I.

Obligatory review

Pursuant to Article 36 of Additional Protocol I, every State Party is under an obligation to assess the legality of any new weapons, means or methods of warfare it studies, develops, acquires or adopts. It must determine whether their employment would, in some or all circumstances, violate the rules of Additional Protocol I or other rules of international law.

It is noteworthy that some States not yet party to Additional Protocol I have adopted procedures to ensure their weapons are subjected to this type of review.

Procedures and mechanisms

Additional Protocol I does not specify how determination of the legality of weapons, means and methods of warfare is to be carried out. It is thus the responsibility of every State Party to adopt the administrative, regulatory and other measures needed to fulfil its obligations under Article 36.

Existing measures adopted by States vary. They range from establishment of a committee with responsibility for such assessments to attribution of authority to conduct such reviews to specific

departments within the Ministry of Defence, or to the Judge Advocate General of a specific branch of the armed forces.

Where committees have been established, they are usually composed of representatives from the Ministry of Defence, the armed forces and the Ministry of Foreign Affairs. They may meet at regular intervals or as required. In some cases, committee decisions can be appealed.

Whatever the review mechanism chosen, States are encouraged to adopt a multidisciplinary approach to reviews which takes into account, as appropriate, the advice of military, legal, medical and environmental experts.

It is recommended that States undertake reviews at the earliest possible stage, whether during the study and development of new weapons, means or methods of warfare, or at the time of their acquisition or adoption, but in any case, prior to their employment.

In States which have a national committee for the implementation of international humanitarian law, this committee can encourage the adoption of national review procedures.

Scope of reviews

The obligation to conduct legal reviews applies to all new weapons, means and methods of warfare, whether anti-personnel or anti-materiel.

The expression "methods of warfare" refers *inter alia* to the ways in which weapons are used. Examples of methods of warfare prohibited by Additional Protocol I include indiscriminate attacks, attacks on installations containing dangerous forces when such attacks cause severe losses among the civilian population, and the starvation of civilians.

Existing weapons, means and methods of warfare which are modified after an initial review also fall within the scope of Article 36.

Although not specifically required to do so by Article 36, States should also examine the legality of weapons to be exported. This is a logical extension of the obligation contained in Article 1 common to the four 1949 Geneva Conventions and Additional Protocol I "to respect and to ensure respect" for these treaties.

Rules and factors to be considered in the conduct of reviews

States must consider whether new weapons, means or methods of warfare under review are prohibited by customary international law or treaty law applicable to them. They must also consider the rules on the conduct of hostilities, including those set out in Additional Protocol I.

Prohibitions relating to specific weapons, means and methods of warfare may be found in a number of treaties, including, among the most recent:

- the 1972 Biological Weapons Convention;
- the 1976 Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques;
- the 1980 UN Convention on Conventional Weapons and its Protocols;
- the 1993 Chemical Weapons Convention; and
- the 1997 Convention on the Prohibition of Anti-Personnel Mines.

The rules governing the conduct of hostilities found in Additional Protocol I include prohibitions on weapons, means or methods of warfare:

- of a nature to cause superfluous injury or unnecessary suffering (Article 35(2));
- which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment (Article 35 (3));
- which cannot be directed at a specific military objective or the effects of which cannot be limited as required by Additional Protocol I, and consequently, are of a nature to strike military objectives and civilians or civilian objects without distinction (Article 51(4)).

States are encouraged to consider other factors such as the military necessity for and intended use of new weapons, means and methods of warfare; their effects on health and available information on the nature of the injury caused (especially if this is unknown or unfamiliar); and whether another weapon, mean or method of warfare could achieve the same military purpose.

Information on national measures to implement international humanitarian law may be found at: <http://www.icrc.org/ihl-nat>.

The International Committee of the Red Cross (ICRC) would be glad to receive any additional information on measures taken by States to implement Article 36 of Additional Protocol I.

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